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New Jersey and WTC Tower 1, LLC*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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	:	
<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>COLLAVINO CONSTRUCTION COMPANY INC.,</b>	:	<b>Case No. 14-12908 (SCC)</b>
	:	
	:	<b>Presentment Date and Time:</b>
<b>Debtor.</b>	:	<b>December 3, 2014 at 12:00 p.m.</b>
	:	
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**CONSOLIDATED OBJECTION OF THE PORT AUTHORITY PARTIES  
TO (I) DEBTOR’S MOTION FOR ORDER UNDER BANKRUPTCY  
RULE 2004 AUTHORIZING ORAL EXAMINATION OF AND  
PRODUCTION OF DOCUMENTS BY THE PORT AUTHORITY OF NEW  
YORK AND NEW JERSEY AND (II) DEBTOR’S MOTION FOR ORDER  
UNDER BANKRUPTCY RULE 2004 AUTHORIZING ORAL  
EXAMINATION OF TISHMAN CONSTRUCTION COMPANY**

The Port Authority of New York and New Jersey (the “**Port Authority**”) and WTC Tower 1, LLC (“**WTC Tower 1**” and, collectively with the Port Authority, the “**Port Authority Parties**”), by their undersigned counsel, submit this consolidated objection to the following motions filed by Collavino Construction Company, Inc. (“the “**Debtor**”) (collectively, the “**Rule 2004 Motions**”): (i) *Motion for Order Under Bankruptcy Rule 2004 Authorizing Oral Examination of and Production of Documents by The Port Authority of New York and New Jersey* [Dkt. No. 55]; and (ii) *Motion for Order Under Bankruptcy Rule 2004 Authorizing Oral*

*Examination of Tishman Construction Company* [Dkt. No. 50]. For the reasons set forth herein, the Rule 2004 Motions should be denied.

In support of their objection, the Port Authority Parties state as follows:

### **Introduction**

1. The Debtor portrays this as a situation in which it has filed the Rule 2004 Motions as a routine matter so it can obtain information to value a bankruptcy estate asset. Nothing could be further from the truth. In actuality, the Rule 2004 Motions are an improper attempt by the Debtor to obtain discovery to assist its non-debtor affiliate, Collavino Construction Company Limited (“CCCL”), in pursuing a claim against the Port Authority Parties arising out of CCCL’s construction contract with WTC Tower 1 in connection with the One World Trade Center project.

2. The claim that is the target of the Debtor’s discovery (*i.e.*, CCCL’s claim under the construction contract) is not property of the bankruptcy estate. The Debtor is not a party to the construction contract, and the Debtor has no basis to assert any claim against the Port Authority Parties or Tishman Construction Company (“**Tishman**”), which acts as construction manager for the One World Trade Center project. The Debtor’s sole claim in this matter is a related-party receivable that allegedly is owed to the Debtor by CCCL.

3. Significantly, the CCCL claim is currently the subject of a pending proceeding under the mandatory dispute resolution provision of the construction contract. The claim is complex, and the amount in controversy exceeds \$87 million. In accordance with the requirements of the agreed-upon dispute resolution procedures, CCCL has submitted voluminous materials to the Port Authority in support of its position, and the matter is working its way through the claim review process. The Debtor and CCCL (which is represented by the same law

firm that acts as the Debtor's counsel on construction matters) should not be permitted to use Rule 2004 to make an end run around the ongoing claim review process.

4. The Debtor does not have an unfettered right to discovery under Rule 2004, and courts have frequently recognized that Rule 2004 has its limits. To establish an entitlement to discovery under Rule 2004, the Debtor has the burden of demonstrating that "good cause" exists to grant the discovery sought in light of the totality of the circumstances, including the relevance and utility of the discovery sought and the potential burden, intrusiveness and expense involved.

5. Here, the Debtor has failed to demonstrate good cause for the discovery sought in the Rule 2004 Motions. The discovery sought is not relevant because it will not assist the Debtor in valuing bankruptcy estate property. The discovery is also outrageously burdensome. Rather than tailor its discovery to identify information that it may reasonably require, the Debtor has instead elected to proceed in the most costly and least effective manner by making an all-encompassing grab for discovery. Given the circumstances, the Debtor has exceeded the limits of permissible discovery under Rule 2004. To the extent there is any relevance or utility to the discovery sought by the Debtor, it is far outweighed by the burden, intrusiveness and expense to the Port Authority Parties and Tishman.

### **Factual Background**

#### **The World Trade Center Contract**

6. The Port Authority owns the World Trade Center site and, in addition, manages and/or operates numerous critical transportation and trade assets in the New York/New Jersey region. Its network of aviation, rail, surface transportation and seaport facilities transport people and vital cargo throughout the region.

7. WTC Tower 1 is a limited liability company that is wholly owned by the Port Authority. WTC Tower 1 was established in connection with the construction and ownership of the One World Trade Center building located in lower Manhattan.

8. In May 2007, WTC Tower 1 a/k/a 1WTC, LLC entered into a contract (the “**WTC Contract**”) with CCCL under which CCCL agreed to furnish and place certain concrete in connection with the One World Trade Center project (the “**WTC Project**”). A copy of the WTC Contract (without riders) is attached hereto as **Exhibit 1**.

9. The WTC Contract includes a mandatory dispute resolution provision that governs “all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract . . . or the Project[,]” and the parties agreed that the decision of the Chief Engineer “shall be conclusive, final and binding on the parties.” WTC Contract at ¶ 31. In particular, the WTC Contract provides:

**31. SUSPENSION, TERMINATION AND ALTERNATIVE  
DISPUTE RESOLUTION OF ALL DISPUTES**

\* \* \*

To resolve all disputes and to prevent litigation the parties to this Contract authorize the Chief Engineer to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal and claims of a type which are barred by the provisions of this Contract) or the Project and his decision shall be conclusive, final and binding on the parties. His decision may be based on such assistance as he may find desirable. The effect of his decision shall not be impaired or waived by any negotiations or settlement offers in connection with the question decided, whether or not he participated therein himself, or by any prior decision of the Engineer or others, which prior decisions shall be deemed subject to review by the Chief Engineer, or by any termination or cancellation of this Contract.

All such questions shall be submitted in writing by either party to the Chief Engineer for his decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and



impartial decision may be made. In any action against the Construction Manager or 1 WTC relating to any such question the Contractor must allege in his complaint and prove such submission, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to the Chief Engineer.

This numbered clause shall be governed by and construed in accordance with the law of the State of New York, without giving effect to its choice of law provisions.

WTC Contract at ¶ 31.

### **The CCCL Claim**

10. CCCL has asserted a damage claim under the WTC Contract (the “**CCCL Claim**”) and, consistent with the dispute resolution provision of the WTC Contract, has submitted its claim for consideration by the Port Authority’s Chief Engineer. *See Affidavit of Renzo Collavino Pursuant to Local Bankruptcy Rule 1007-2* filed on October 17, 2014 [Dkt. No. 2] (stating that “CCCL submitted the [CCCL] Claim for equitable adjustment to the Port Authority pursuant to the dispute resolution procedure contained in the [WTC] Contract”).

11. CCCL is represented in the dispute resolution proceeding by the law firm of Peckar & Abramson P.C., which is the same law firm that the Debtor is seeking to engage as its special counsel. *See Application Pursuant to 11 U.S.C. § 327(e) for Entry of An Order Authorizing Retention of Peckar & Abramson P.C. as Special Counsel to the Debtor* filed on November 14, 2014 [Dkt. No. 47].

12. The CCCL Claim is complex, and the amount in controversy exceeds \$87 million. CCCL has submitted thousands of pages of materials to the Port Authority in support of its position, and the matter is working its way through the claim review process. As of the date hereof, the Chief Engineer has not rendered a decision on the CCCL Claim.

### **The Debtor's Claim Against CCCL**

13. The Debtor is not a party to the WTC Contract, and it did not enter into any contract with any of the Port Authority Parties in connection with the WTC Project. Furthermore, the Debtor is not a third party beneficiary of the WTC Contract. *See* WTC Contract at ¶ 47 (stating, under the heading “No Third Party Rights,” that the WTC Contract is not intended to benefit third parties other than the Port Authority unless a certain provision specifically states that it “benefits” a third party or uses the phrase “direct right of action”).

14. Upon information and belief, CCCL entered into a subcontract with the Debtor (the “**CCCL Subcontract**”) under which the Debtor agreed to perform certain work required by CCCL in connection with the WTC Contract. The CCCL Subcontract between CCCL and the Debtor is separate from the WTC Contract.

15. The Debtor claims that it is owed \$6.2 million by CCCL under the CCCL Subcontract. *See Debtor's Schedule B* filed on November 4, 2014 [Dkt. No. 29].

### **The Rule 2004 Motions**

16. On November 18 and 19, 2014, the Debtor filed the Rule 2004 Motions. The Debtor asserts in the Rule 2004 Motions that it requires discovery to assess the value and collectability of the CCCL Claim.

17. Each of the Rule 2004 Motions includes a schedule with a list of broad deposition topics that generally cover all matters relating to the WTC Contract and the CCCL Claim that currently is the subject of the dispute resolution proceeding. In addition, the Rule 2004 Motion directed at the Port Authority (the “**Port Authority Rule 2004 Motion**”) includes a document request that includes 24 separate requests seeking production of substantially all documents relating to the WTC Contract and the CCCL Claim.

**Legal Analysis and Argument**

**A. The Debtor Has an Affirmative Burden to Demonstrate Good Cause for the Discovery Sought in the Rule 2004 Motions**

18. “As a general proposition, Bankruptcy Rule 2004 examinations are appropriate for revealing the nature and extent of the bankruptcy estate, and for ‘discovering assets, examining transactions, and determining whether wrongdoing has occurred.’” *In re Enron Corp.*, 281 B.R. 836, 844 (Bankr. S.D.N.Y. 2002) (quoting *In re Strecker*, 251 B.R. 878, 882 (Bankr. D. Colo. 2000)) (internal citations omitted). Consistent with this purpose, some courts have characterized Rule 2004 examinations as a “quick factual fix relative to the estate, its existence and location.” *In re Dinubilo*, 177 B.R. 932, 941 (E.D. Cal. 1993); *In re Silverman*, 36 B.R. 254, 259 (Bankr. S.D.N.Y. 1984).

19. Although the scope of a Rule 2004 examination may be broad, it is not without limits. “[A] Rule 2004 examination must be both relevant and reasonable[.]” and it “should not encompass matters that will be unduly burdensome to the [examinee] and duplicative of previously furnished information.” *In re Symington*, 209 B.R. 678, 684 (D. Md. 1997) (citing numerous cases); *In re Texaco, Inc.*, 79 B.R. 551, 553 (Bankr. S.D.N.Y. 1987) (noting that a Rule 2004 examination “should not be so broad as to be more disruptive and costly to the [examinee] than beneficial to the [examiner]”). *See also In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991) (noting that, although a Rule 2004 examination may be a fishing expedition, “[i]t can net the dolphins as well as tuna; however, the net, in the discretion of the Court, can be carefully stitched to limit its catch”).

20. Once a challenge is made to a Rule 2004 motion, the movant must show that it has “good cause” to conduct the examination. “Good cause is shown if the examination sought is ‘necessary to establish the claim of the party seeking the examination, or if denial of such

request would cause the examiner undue hardship or injustice.” *In re Madison Williams & Co., LLC*, 2014 WL 56070, \*4 (Bankr. S.D.N.Y. Jan. 7, 2014) (quoting *ePlus, Inc. v. Katz (In re Metiom, Inc.)*, 318 B.R. 263, 268 (S.D.N.Y. 2004)).

21. The determination of whether the moving party has made a showing of good cause is not a mechanical test:

Rather, a totality of circumstances approach is required, taking into account all relevant factors. Consistent with this approach it is appropriate to apply the “good cause” standard in what may be termed a “sliding scale” manner or balancing test. This is to say, the level of good cause required to be established by the [movant] before [it] can obtain certain documents and pursue a certain line of inquiry in a Rule 2004 examination . . . will vary depending on the potential intrusiveness involved.

*In re Countrywide Home Loans, Inc.*, 384 B.R. 373, 393 (Bankr. W.D. Pa. 2008) (citations omitted). *See also Drexel Burnham*, 123 B.R. at 712 (noting that Rule 2004 requires the court to “balance the competing interests of the parties, weighing the relevance of and necessity of the information sought” and, further, that “relevance does not alone demonstrate that there is good cause” for requiring the production of information).

**B. The Debtor Has Failed to Demonstrate Good Cause for the Discovery Sought in the Rule 2004 Motions**

22. The Debtor has not, and it cannot, demonstrate good cause for the sweeping discovery sought in the Rule 2004 Motions. The Debtor’s purported reason for filing the Rule 2004 Motions is to gather information that it needs to assess the value and collectability of the CCCL Claim. The CCCL Claim, however, is not property of the Debtor’s bankruptcy estate. As acknowledged by the Debtor in its Schedules, the Debtor’s sole claim in this matter is the related-party receivable that allegedly is owed to the Debtor by CCCL. Rule 2004 should not be used to investigate non-estate claims. *See In re MF Global Inc.*, 2013 WL 74580, \*1 (Bankr.

S.D.N.Y. 2013). Given the Debtor's lack of an ownership interest in the CCCL Claim, the Debtor should have no right to discovery relating to the CCCL Claim.

23. The Debtor's true motivation in filing the Rule 2004 Motions is to assist its non-debtor affiliate, CCCL, in pursuing the CCCL Claim, which is the subject of a pending proceeding under the mandatory dispute resolution provision of the WTC Contract. Under New York law, which governs the WTC Contract, the dispute resolution provision is valid and enforceable. In *Yonkers Contracting Co., Inc. v. Port Authority Trans-Hudson Corp.*, 208 A.D.2d 63, 64-66, 621 N.Y.S.2d 642 (1995), the court upheld a virtually identical dispute resolution provision requiring that all claims relating to a construction contract be submitted to the Chief Engineer of Port Authority Trans-Hudson Corporation. In doing so, the court stated that "[t]he contract is the negotiated product of sophisticated parties who had entered into a complex multimillion dollar business transaction" and that "[t]he dispute resolution clause . . . was part of that contract and was included as a bargained for provision"). The *Yonkers Contracting* decision was affirmed by New York's Court of Appeals. See *Yonkers Contracting Co., Inc. v. Port Authority Trans-Hudson Corp.*, 87 N.Y.2d 927, 663 N.E.2d 907 (1996).

24. Here, the mandatory dispute resolution provision of the WTC Contract, like the virtually identical provision at issue in *Yonkers Contracting*, is a material and bargained-for provision of the WTC Contract. Consistent with the dispute resolution provision of the WTC Contract, CCCL has submitted its claim for consideration by the Port Authority's Chief Engineer who, under the terms of the WTC Contract, has the sole power to issue a decision on the claim that "shall be conclusive, final and binding on the parties." WTC Contract at ¶ 31. Now is not the time for the commencement of burdensome discovery relating to the CCCL Claim,

particularly not by a party such as the Debtor that has no rights in the claim review process and has no business interfering with the process.

25. The Debtor fails to explain in the Rule 2004 Motions how the discovery it is seeking will somehow enable it to assess the value of the CCCL Claim, a determination that under the terms of the WTC Contract is the exclusive province of the Port Authority's Chief Engineer. The Debtor also fails to explain why it apparently has made no effort to consider, in assessing the value of the CCCL Claim, the extensive documents and other information in its own possession and in the possession of its affiliate, CCCL. Instead, the Debtor has sought, without any regard for the burden, intrusiveness and expense to the Port Authority and Tishman, to require the Port Authority and Tishman to appear for Rule 2004 examinations and for the Port Authority to produce every document imaginable relating to the WTC Contract and the CCCL Claim.

26. Finally, even if it is assumed that the discovery sought by the Debtor has some relevance and that the Debtor has made a showing of need to obtain the discovery (an assumption that is not warranted here), the Debtor still should not be entitled to proceed with the discovery because the certain burden and expense of the discovery far outweighs any supposed benefit. The court is required to "weigh the relevance of the discovery against the burden it will impose on the producing party." *Madison Williams & Co.*, 2014 WL 56070 at \*4. And where the requested discovery is extensive, the burden is on the requesting party to prove that the discovery is necessary to establish a claim or that denial of discovery would result in undue hardship. *See In re Wilcher*, 56 B.R. 428, 435 (Bankr. N.D. Ill. 1985) (citing *Freeman v. Seligson*, 405 F.2d 1326, 1336 (D.C. Cir. 1968)). Here, the Debtor is seeking five depositions that will cover broad-ranging topics and, further, is seeking tens of thousands of pages of

documents. Absent a showing of compelling need by the Debtor, which has not been made here, the Port Authority and Tishman should not be required to incur the burden and expense of the exhaustive discovery that the Debtor has requested.

**C. The Discovery Sought in the Rule 2004 Motions is Prohibited  
Because the CCCL Claim is the Subject of a Pending Proceeding**

27. “Rule 2004 examinations should not be designed to discover information for use in an unrelated case or proceeding.” *In re Lufkin*, 255 B.R. 204, 208-09 (Bankr. E.D. Tenn. 2000). The courts have thus developed a “pending proceeding” rule to prohibit or limit the use of Rule 2004 where the discovery sought relates to information for a separate pending proceeding. *See In re Enron Corp.*, 281 B.R. 836, 842 (Bankr. S.D.N.Y. 2002) (noting that courts have prohibited Rule 2004 discovery “where the party requesting the Rule 2004 examination could benefit their pending litigation outside of the bankruptcy court against the proposed Rule 2004 examinee”). *See also Snyder v. Society Bank*, 181 B.R. 40, 42 (S.D. Tex. 1994), *aff’d sub nom. In re Snyder*, 52 F.3d 1067 (5th Cir. 1995) (holding that the use of Rule 2004 by a party to further a separate state court proceeding “constitutes an abuse of Rule 2004”).

28. Here, the discovery sought by the Debtor relates to the CCCL Claim, which is the subject of a pending proceeding under the mandatory dispute resolution provision of the WTC Contract. Indeed, the Debtor states that it is seeking “to use the broad powers of Bankruptcy Rule 2004 to perform certain necessary due diligence relating to the [CCCL Claim] as against the Port Authority.” *See* Port Authority Rule 2004 Motion at ¶ 16. Given the pending dispute resolution proceeding, this is not an appropriate use of Rule 2004.

**Conclusion**

29. As set forth herein, the Debtor has failed to demonstrate good cause for the discovery sought in the Rule 2004 Motions. Accordingly, the Rule 2004 Motions should be denied.

WHEREFORE, for the reasons set forth herein and for such other reasons that may be presented at any hearing on the Rule 2004 Motions, the Port Authority Parties request that the Court enter an order denying the Rule 2004 Motions.

Dated: New York, New York  
December 1, 2014

Respectfully submitted,

DLA PIPER LLP (US)

By: /s/ Jamila Justine Willis

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*Counsel for The Port Authority of New York  
and New Jersey and WTC Tower 1, LLC*



## **Exhibit 1**

WORLD TRADE CENTER

CONCRETE (BELOW GRADE)  
LUMP SUM CONTRACT

CONTRACT WTC-1001.04-1

February 8, 2007

This Proposal is not complete unless bidder's  
signature appears on page

RECEIVED  
MAY 8 0 2007  
TISHMAN  
1WTC



**PROJECT:** WORLD TRADE CENTER – TOWER ONE  
NEW YORK, NEW YORK

**TRADE:** CONCRETE – BELOW GRADE

**OWNER:** 1WTC, LLC  
225 Park Avenue South  
New York, New York 10003  
(herein called "1WTC")

**CONSTRUCTION  
MANAGER:** TISHMAN CONSTRUCTION CORPORATION  
666 Fifth Avenue  
New York, New York 10103  
(herein called the "Construction Manager"  
as Agent for the "Owner")

**CONTRACTOR:** COLLAVINO CONSTRUCTION COMPANY LIMITED  
5255 COUNTY ROAD 42  
WINDSOR, ONTARIO  
N8N 2M1  
(herein called the "Contractor")

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be  
duly executed as of the day and year first above written.

**ACCEPTED:**

**CONSTRUCTION MANAGER:**

**COLLAVINO CONSTRUCTION COMPANY LIMITED**

**TISHMAN CONSTRUCTION CORPORATION**

(Contractor)

(as Agent for the "Owner")

BY: 

BY: 

(Signature)

Martin Adelman, Vice President

(Print Name & Title)

**DATE:** May 29/07

**DATE:** May 10, 2007

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## LIST OF RIDERS

Rider "A", General Addendum, dated February 8, 2007 (Revision #2)  
Rider "B", List of Drawings and Specifications, dated January 15, 2007  
Rider "C", Alternatives & Unit Prices, dated February 8, 2007 (Revision #1)  
Rider "D", Insurance Rider, dated November 30, 2006  
Rider "DX", Owner Controlled Insurance Program (or OCIP), including Attachment DX-1,  
dated May 18, 2007  
Rider "E", [Intentionally Deleted]  
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Rider "G", Sustainable Construction Requirements, dated May 11, 2007 (Revision #6)  
Rider "H", Requirements for Work in PATH Right of Way, dated June 16, 2006  
Rider "I", Sales And Use Tax Requirements, dated May 18, 2007  
Rider "J", Below Grade Temporary Services For Construction Purposes, dated February 2, 2007  
Rider "K", Project Corruption Prevention Program, dated January 8, 2007  
Rider "L", Payment Procedures, dated December 14, 2006  
Rider "M", Tishman Construction Safety Guidelines, dated November 2, 2005  
Rider "N", Port Authority of New York & New Jersey WTC Site Rules and Regulations, dated January 1,  
2006  
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Rider "S", Site Security Requirements, dated January 8, 2007  
Rider "T", Milestone Dates and Liquidated Damages, February 8, 2007  
Rider "U", Additional Provisions, dated March 23, 2007  
List Of Pads And Curbs Sketches, dated January 8, 2007  
Curb Layout For Plaza annotated on Drawing L1.00, dated January 12, 2007  
Sketch ASK-3876: Workpoints of Modified Liner Wall, dated December 20, 2006  
Rider "A-ALT #5", General Addendum, dated February 8, 2007 (Revision #1) – ONLY PERTAINS TO  
ADD ALTERNATE #5 IN RIDER "C".

CONTRACT WTC-XXX.XXX

## INSTRUCTIONS FOR BIDDERS AND BID PROPOSAL FORM

### 1. FORM AND SUBMISSION OF PROPOSALS

Tishman Construction Corporation, a Delaware corporation, having an office at 666 Fifth Avenue, New York, New York 10103 ("Construction Manager"), as agent for 1 World Trade Center LLC, a Delaware Limited Liability Company, having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York 10003 ("1 WTC"), invites Proposals in the annexed form. Proposals will be received at a date and time designated by Construction Manager at Construction Manager's office located at 170 Broadway, New York, New York 10038. Each Proposal must be contained in the envelope furnished by the Construction Manager, which shall be sealed and conspicuously endorsed with the bidder's name and the number of this Contract in the space provided. This Contract booklet shall not be unstapled or taken apart.

The Proposal must be submitted upon the blank form bound herewith and must give all information required.<sup>1</sup> The Proposal must be signed and the acknowledgment taken on the appropriate form following the Proposal.

No effort is made to emphasize any particular provision of the Contract, but bidders must familiarize themselves with every provision and its effect. All Bid Proposal information (i.e., Lump Sum, unit price, alternates, etc.) is to be formatted on a spreadsheet prepared for the bid opening and available from Construction Manager. The spreadsheet should be prepared in a Lotus or Excel format and the computer file accessible to only the Construction Manager and approved personnel. Information to be contained on the spreadsheet may include, at the discretion of the Construction Manager, the following (or other additional items):

- a. Project date, trade
- b. Contractor's name, address, phone number
- c. Contact
- d. Lump Sum
- e. Budget (Adjusted to reflect bid package)
- f. Unit Prices
- g. Alternates
- h. Bidder's Alternates
- i. Schedule Duration
- j. Qualifications
- k. Exclusions.

All revised information is to be documented on a new spreadsheet and denoted as revised.

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<sup>1</sup> While two or more copies of this booklet may be furnished to each prospective bidder, only one should be submitted. The extra copies are for the bidder's use.



Bidder shall assume for purposes of its Proposal that no New York State sales, use or other tax applies to any materials or equipment purchased in connection with the performance of the Bidder's Work. Therefore, Bidder represents that any prices in its Proposal including, but not limited to, the Lump Sum, Unit Prices and Alternates do not include any such tax. For more detailed information, please see the tax provisions in this Agreement, including, without limitation, Sections 19 and 20 herein.

## **2. PAPERS ACCOMPANYING PROPOSALS**

Each Proposal must be accompanied by the following papers, which, unless otherwise indicated, should be enclosed with the Proposal:

- A. If the bidder be a corporation, a statement of the names and residences of its officers, which should be included on the page following the Proposal.
- If the bidder be a partnership, a statement of the names and residences of its members, indicating which are general and which are special partners, which should be included on the page following the Proposal.
- If the bidder be an individual, a statement of his residence, which should be included on the page following the Proposal.
- B.
- 1.) If requested, Contractor may be required, within seven (7) days of such request, certified financial statements, including applicable notes, reflecting the bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the bidder's most recent fiscal year.
  - 2.) Where such certified financial statements are not available, then either reviewed or compiled statements from an independent accountant setting forth the information described in paragraph 1, above.
  - 3.) Where neither certified financial statements nor financial statements from an independent accountant are available, then financial statements containing the information described in paragraph 1, above, prepared directly by the bidder. However, such financial statements must be accompanied by a signed copy of the bidder's most recent federal income tax return and a statement in writing, signed by a duly authorized representative of the bidder, that such statements accurately reflect the current financial condition of the bidder.
- Where statements submitted pursuant to either paragraph 1 or 2, above, show the position of the bidder as of a date more than forty-five (45) days prior to the date on which Proposals are opened, the bidder shall also submit a statement in writing signed by a duly authorized representative of the bidder, that the present financial condition of the bidder is at least as good as that shown on the statements submitted.
- 4.) A statement of work which the bidder has on hand, including any work on which a bid has been submitted, containing a description of the work, the dollar value, the location by city and state, the current percentage of completion and the expected date for completion.
  - 5.) Fill in below the name and address of the bidder's chief banking representative handling the bidder's account.

Banking Institution: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Bank Representative: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

- 6.) Fill in below the bidder's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes); the bidder's Dun and Bradstreet number, if any; the name of any other credit service to which the bidder has furnished information and the number, if any, assigned by such service to the bidder's account.

\_\_\_\_\_  
Federal Employer Identification No.

\_\_\_\_\_  
Dun and Bradstreet No.

\_\_\_\_\_  
Other Credit Service

\_\_\_\_\_  
Account No

- 7.) A letter from bidder's surety (a letter from a broker is unacceptable) confirming that such bidder shall be capable of providing a payment and performance bond in the full amount of the bidder's bid.
- 8.) Bidder shall complete and submit the certifications and all necessary disclosure forms required under Rider K (Project Corruption Prevention Program) to this Contract.
- C. With the bid, the bidder's analysis of bid filled in on the form furnished herewith. The Contractor will be required to furnish a more detailed analysis of bid at a later date in accordance with the requirements of the Section of Division 1 of the Specifications referring to the Analysis of Bid.
- D. The Form of Contract bound herewith, with the bidder's Lump Sum inserted in the clause thereof entitled "General Agreement." The amount must be given both in figures and in writing and, in case of discrepancy, the writing shall control. One copy of each addendum, if any, issued during the bidding period shall be initialed and attached to the Proposal, but any Proposal submitted without such addendum initialed and attached will nevertheless be construed as though such addendum had been initialed and attached.

### 3. QUALIFICATION INFORMATION

At any time after the opening of Proposals, the Construction Manager may give oral or written notice to one or more bidders to attend a pre-award meeting and to furnish the Construction Manager with information relating to his qualifications to perform the Work, including the following, which information shall be furnished within seven (7) days thereafter:

- A. The bidders MBE/WBE Participation Plan submitted in accordance with Section 8, "Minority and Women's Business Enterprises Program," and a detailed list of the plant and equipment which the bidder proposes to use, indicating which portions it already possesses.
- B. Detailed information relating to work which the bidder has completed for others, including personal and corporate references, sufficient to the Construction Manager to determine the Contractor's responsibility, experience and capacity to perform the Work. If required by the Construction Manager, the foregoing information shall include information to demonstrate to the satisfaction of the Construction Manager that the contractor has within the past five years been a contractor on at least one contract of the same general type, extent and complexity as the Contract on which the Proposal has been submitted, and completed the work skillfully, in a satisfactory manner and on time.
- C. Information to supplement a) data shown in the financial statements and the statement of work on hand required to be submitted with the Proposal; and b) any statement submitted under the clause hereof entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Suspension, Debarment, Disqualification, Prequalification Denial or Termination, etc, Disclosure of Other Required Information", Certification of Participation in a State-Registered Apprenticeship Program or "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent Fee or Other Fee".
- D. Moreover, in the event that the bidder's performance on a past Construction Manager or Authority or PATH contract or contracts has been rated less than satisfactory, the Construction Manager may give oral or written notice to the bidder to furnish information demonstrating to the satisfaction of the Construction Manager that, notwithstanding such rating, such performance was, in fact, satisfactory, or that the circumstances which gave rise to such unsatisfactory rating have changed or will not apply to performance of the Contract, and that such performance will be satisfactory.
- E. If the bidder has performed a contract for the States of New York or New Jersey, or any governmental entity within such States and has filed a questionnaire or other document required to be submitted in order for the bidder to qualify to perform the contract, the bidder may be requested by the Construction Manager to submit the most recent completed questionnaire or other such document, or if the most recent completed questionnaire or other such document is not available, to submit a written statement indicating the approximate date of the contract and the name of the governmental entity which awarded them the contract.
- F. Any additional information relevant to the bidder's Proposal including information to supplement the bidder's initial analysis of bid.

In the event that any of the foregoing is requested and is not furnished within seven days thereafter or within such additional time as the Construction Manager, in his sole discretion, may allow, the Construction Manager may not be in a position to determine whether the bidder is qualified, whether the bidder understands the requirements of the contract or whether the bid is responsive and may, in its sole discretion, reject the bidder's Proposal.

The giving of such notice to the bidder in connection with any of the foregoing lists, statement or information shall not be construed as an acceptance of his Proposal. However, the Construction Manager reserves the right in its sole and absolute discretion, to accept the Proposal of a bidder despite the fact that said bidder has not submitted any information, list or statement required pursuant to this Section within the above-stated time period.

#### **4. ACCEPTANCE OR REJECTION OF PROPOSAL**

Within one hundred eighty (180) days after the opening of the Proposals, the Construction Manager may, in its discretion, accept one of the Proposals, if Construction Manager accepts any. The acceptance of a Proposal will be only by mailing to or delivering at the office designated in the Proposal a notice in writing specifically indicating acceptance signed by Construction Manager. No other act of the Construction Manager shall constitute acceptance of a Proposal. Such notice will state whether or not the Construction Manager elects to require the bidder to furnish a Performance and Payment Bond. Rejection of a Proposal will be only by either (a) a notice in writing specifically stating that the Proposal is rejected, signed by Construction Manager and mailed to or delivered at the office designated in the Proposal or (b) omission of the Construction Manager to accept a Proposal within one hundred eighty (180) days after the opening of Proposals; and no other act of the Construction Manager shall constitute rejection of a Proposal, including any counter offer or other act of the Construction Manager.

The Construction Manager reserves the unqualified right, in its sole and absolute discretion, to reject all Proposals, seek modifications to one or more Proposals, or to accept that Proposal if any, which in its judgment will under all the circumstances best serve the public interest and to waive defects in any Proposal.

In the event that a successful bidder defaults upon the Contract by failing to furnish a satisfactory Performance and Payment Bond, if required, and the Construction Manager terminates the Contract, the Construction Manager reserves the option to accept the Proposal of any other bidder within one hundred eighty (180) days after the opening of Proposals, in which case such acceptance shall have the same effect as to such other bidder as though he were the originally successful bidder.

#### **5. INTENTIONALLY DELETED**

#### **6. DISPOSAL OF CONTRACT DOCUMENTS**

All recipients of Contract documents, including bidders and those who do not bid and their prospective Subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or arrangements with refuse handlers that ensure that third persons will not have access to the documents' contents either before, during, or after disposal. Documents may also be returned for disposal purposes to the Construction Manager.

## **7. AVAILABLE DOCUMENTS**

Certain documents, specified in **Rider O (Available Documents)**, are available for reference and examination by bidders by contacting Construction Manager at Construction Manager's office to review such documents during regular business hours. These documents were not prepared for the purpose of providing information for bidders upon the present Contract but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not form a part of this Contract. The Construction Manager makes no representation or guarantee as to, and shall not be responsible for their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the conclusions to be drawn therefrom. They are made available to the bidders merely for the purpose of providing them with such information as is in the possession of the Construction Manager, whether or not such information may be accurate, complete or pertinent or of any value to the bidders. Bidders accept all risks of inaccurate or incomplete information.

## **8. MINORITY AND WOMEN'S BUSINESS ENTERPRISES PROGRAM (MBE/WBE)**

The Construction Manager and 1 WTC adopt the Authority's long-standing practice of making its contract opportunities available to as many firms as possible and has taken affirmative steps to encourage Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) to seek business opportunities with it.

"Minority-owned business" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned and controlled by one or more members of one or more minority groups, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

"Women-owned business" or "WBE" means a business which is at least fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned and controlled by one or more women, and whose management and daily business operations are controlled by one or more women who are citizens or permanent resident aliens.

"Minority group" means any of the following racial or ethnic groups:

- A. Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
- B. Hispanic (all persons of Puerto Rican, Mexican, Dominican, Cuban, Central, or South American culture or origin, regardless of race);
- C. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands);
- D. Native American or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

To ensure meaningful participation of MBEs and WBEs on this Project, 1 WTC has set goals of twelve percent (12%) for firms owned and controlled by minorities, and five percent (5%) for firms owned and controlled by women. The MBE/WBE Participation Plan, described below, should meet or exceed these goals. If such goals are not met, Contractor shall be responsible for demonstrating its "good faith" efforts to achieve the goals.

Each Bidder's Proposal shall be accompanied by a complete Minority Business Enterprises/Women Business Enterprises Participation Plan ("MBE/WBE Participation Plan") on a form approved by Construction Manager. The MBE/WBE Participation Plan must be approved by Construction Manager before award of the Contract. The MBE/WBE Participation Plan shall include the following information:

- A. Name and telephone number of designated MBE/WBE contact person;
- B. Names and addresses of proposed MBE/WBE contractors; the proposed MBE/WBE contractors must be approved as described below in this Section 8;
- C. Description of work and approximate dollar value of work to be performed by each MBE/WBE contractor;
- D. Percent of participation in relationship to the cost of the overall Project for each MBE/WBE contractor.

Subsequent to contract award, the Contractor shall use and document every good faith effort to comply with its MBE/WBE Participation Plan and to permit its MBE/WBE Subcontractors to perform. Participation percentages shall be monitored throughout the performance of this Contract. Such good faith efforts shall include at least the following:

- A. Attendance at pre-bid meetings, if any, scheduled by the Construction Manager;
- B. Utilization of the Authority's Directory of certified MBE/WBEs available on-line (see MBE/WBE Directory Letter in back of Contract Book) and/or proposing for certification other MBE/WBEs which appear to meet the Authority's criteria for MBE/WBE certification and which are technically competent to perform the Work which the bidder plans to subcontract;
- C. Active and affirmative solicitation of bids for subcontracts from MBE/WBEs;
- D. Advertisement in general circulation media, trade association publications and minority-focused media for a reasonable period before bids or Proposals are due;
- E. Dividing the work to be subcontracted into smaller portions or encouraging the formation of joint ventures, partnerships or similar arrangements among Subcontractors in order to increase the likelihood of achieving the MBE/WBE goals;
- F. Providing a sufficient supply of plans and specifications of prospective work to MBE/WBEs and providing appropriate materials to each in sufficient time to review;

- G. Utilizing the services of available minority and women's community organizations; contractor's groups; local, state and federal business assistance/development offices and other organizations that provide assistance to MBE/WBEs;
- H. Ensuring that progress payments are made in a timely fashion in accordance with the requirements of this Contract;
- I. Not requiring bonds from and/or providing bonds and insurance for Subcontractors where appropriate;
- J. Soliciting specific recommendations on methods for enhancing MBE/WBE participation from Construction Manager's staff responsible for such participation;
- K. Nominating Subcontractors for participation in business assistance programs sponsored by the Authority or the Regional Alliance of Small Contractors such as the Loaned Executive Assistance Program (L.E.A.P.);
- L. Establishment of impress funds to facilitate MBE/WBE cash flow; and
- M. Directing other contractors to solicit MBE/WBE subcontractor participation.

Subsequent to contract award, the Contractor shall also provide the Construction Manager, at its request, with a trade breakdown schedule showing when the Contractor's MBE/WBE Subcontractors are scheduled to perform. The Contractor shall also submit to the Construction Manager, on a monthly basis, the Statement of Subcontractor's Payments in a form approved by Construction Manager.

In order to assure that the planned goals are being met, a monthly Statement of Payments Reports reflecting the actual payments to MBE/WBE contractors must be submitted throughout the duration of performance of the Contract.

In calculating the progress toward meeting the goal, Contractor shall receive credit for only sixty percent (60%) of the amounts paid to materialmen/suppliers who are MBE/WBE firms, except in the case of firms who manufacture materials. Contractor shall receive one hundred percent (100%) credit for suppliers who manufacture products or make material changes to products before sale.

In the event that, prior to contract award and following review of the MBE/WBE Participation Plan submitted by the bidder pursuant to the clause hereof entitled "Qualification Information", the Construction Manager determines that the Contractor has not made a good faith effort to meet the MBE/WBE participation goals set forth above and that the Contractor has not demonstrated that a full or partial waiver of such goals is appropriate, the Construction Manager may advise the bidder that it is not responsible and may reject the bidder's Proposal.

If, during the performance of the Contract, the Contractor fails to demonstrate good faith in carrying out its MBE/WBE Participation Plan and in permitting its MBE/WBE Subcontractors to perform and the Contractor has not demonstrated that a full or partial waiver of the above referenced MBE/WBE participation goals is appropriate, then, upon receipt of a future Proposal or Proposals from the Contractor, the Construction Manager may advise the Contractor that it is not a responsible bidder and may reject such Proposal(s).

Either prior or subsequent to acceptance of the bidder's Proposal, the bidder may request a full or partial waiver of the above described MBE/WBE participation goals by providing a reasonable demonstration to the Construction Manager that its good faith efforts will not result in compliance with the goals set forth above because participation by eligible MBE/WBEs could not be obtained at a reasonable price or that such MBE/WBEs were not available or refused to perform as Subcontractors. The bidder shall provide such documentation to support its request as the Construction Manager may require.

Once approved, the MBE/WBE Participation Plan submitted by the bidder may be modified only with the written approval of the Construction Manager.

Following approval by the Construction Manager under the clause entitled "Assignments and Subcontracts" of one or more Subcontractors who are either MBEs or WBEs and listed in the MBE/WBE Directory or determined to be "eligible" by the Construction Manager in accordance with this numbered clause, 1 WTC may, at its sole option, provide to said approved MBE/WBEs, without charge, whatever appropriate consultant services may be available under the L.E.A.P. Program; provided, however, that such consultant services will only be furnished pursuant to a request in writing from the Contractor to the General Manager, Small Business Programs, Office of Regional and Economic Development of the Port Authority of New York and New Jersey, 233 Park Avenue South - 4th Floor, New York, NY 10003.

Such services will be discontinued following a written request from the Contractor to the General Manager, Small Business Programs, Office of Regional and Economic Development of the Port Authority of New York and New Jersey, to discontinue them.

The L.E.A.P. services include advising on scheduling, purchasing, planning and other aspects of construction to firms to mitigate business or management problems which could negatively impact on their performance. These services do not include engineering or legal advice. The determination as to whether or not to follow the advice given lies solely with the MBE/WBE Subcontractor. Prior to being accepted as a participant in the L.E.A.P. Program, the MBE/WBE Subcontractor will be required to release the Construction Manager, 1 WTC and the individuals furnishing consultant advice of all liability and responsibility in connection therewith.

The Authority has compiled and made available on-line an MBE/WBE Directory which specifies the firms the Authority has determined to be (1) MBEs/WBEs and (2) experienced in performing work in the trades and contract dollar ranges indicated in the Directory. The Construction Manager makes no representation as to the financial responsibility of such firms or their ability to perform Work required under this Contract. Subject to the following paragraph, only MBEs/WBEs listed in the Directory will count toward the required MBE/WBE participation.



If the Contractor wishes to perform a portion of the Work through a firm not listed in the Directory<sup>2</sup> but which the Contractor believes should be eligible because it is (1) an MBE/WBE, as defined above and (2) technically competent to perform portions of the Work or the Contractor believes it is such a firm, the Contractor shall submit to the General Manager, Small Business Programs, Office of Regional and Economic Development of the Port Authority of New York and New Jersey, a written request for a determination that the proposed firm is eligible. This shall be done by completing and forwarding a) the form labeled "Schedule A" and, if appropriate, "Schedule B" which are annexed hereto and form a part hereof and b) technical references of jobs completed of similar scope and complexity on the form annexed hereto and made a part hereof labeled "MBE/WBE Approval Request" and such other information as may be necessary to permit the Construction Manager to determine whether the firm is in fact an MBE/WBE and technically competent to perform portions of the Work.

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|----|---|----|--|
| 1. | Queens Air Services Development<br>Office<br><br>JFK International Airport<br>Building #141<br>Federal Circle, First Floor<br>Jamaica, NY 11430<br>(718) 244-6852<br>Fax (718) 244-7371 | 2. | Hispanic American Chamber of<br>Commerce of Essex County<br><br>P.O. Box 9146<br>Newark, NJ 07104<br>(973) 484-5441<br>Fax (973) 350-9238                    |
| 3. | Association of Minority Enterprises of<br>NY, Inc.<br><br>135-20 Liberty Avenue<br>Richmond Hill, NY 11419<br>(718) 291-1641<br>Fax (718) 297-2986                                      | 4. | Statewide Hispanic Chamber of<br>Commerce of New Jersey<br><br>150 Warren Street, Suite 110<br>Jersey City, NJ 07302<br>(201) 451-9512<br>Fax (201) 451-9547 |
| 5. | Newark Opportunity Center<br><br>17 Academy Street, Suite 501<br>Newark, NJ 07102<br>(973) 622-4537<br>Fax (973) 622-3914   | 6. | Jamaica Business Resource Center<br><br>90-33 16th Street<br>Jamaica, NY 11432<br>(718) 206-2255<br>Fax (718) 206-3693                                       |

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<sup>2</sup> The following organizations may be able to refer the Contractor to MBEs/WBEs who are technically competent to perform portions of the Work. Any referrals which are not listed in the Directory shall be submitted to the Construction Manager for a determination as to eligibility as provided above.

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| <p>7. Council for Airport Opportunity<br/>90-04 161st Street Jamaica,<br/>NY 11432<br/>(718) 523-7100<br/>Fax (718) 526-3472</p>                 | <p>8. Urban Business Assistance Corp.<br/>New York University Stern School of<br/>Business<br/>44 West 4th Street, Suite 5-61<br/>New York, NY 10012<br/>(212) 995-4404<br/>Fax (212) 995-4255</p> |
| <p>9. Greater Jamaica Development Corp.<br/>90-04 161st Street<br/>Jamaica, NY 11432<br/>(718) 291-0282<br/>Fax (718) 291-7918</p>               | <p>10. NYS Assn. Of Minority Contractors<br/>Brooklyn Navy Yard<br/>Building 280, 4th Floor, Suite 414<br/>Brooklyn, NY 11205<br/>(212) 246-8380<br/>Fax (718) 246-8376</p>                        |
| <p>11. Professional Women in Construction<br/>315 E. 56th Street, Suite 202<br/>New York, NY 10022<br/>(212) 486-7745<br/>Fax (212) 486-0228</p> | <p>12. NY/NJ Minority Purchasing Council<br/>205 East 42nd Street<br/>New York, NY 10017<br/>(212) 573-2385<br/>Fax (212) 522-4004</p>   |
| <p>13. Jamaica Chamber of Commerce<br/>90-25 161st Street, Room 505<br/>Jamaica, NY 11432<br/>(718) 657-4800<br/>Fax (718) 658-4642</p>          | <p>14. Queens Overall Economic<br/>Development Office<br/>120-55 Queens Boulevard, Suite 309<br/>Kew Gardens, NY 11424<br/>(718) 263-0546<br/>Fax (718) 263-0594</p>                               |

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| 15. York College Small Business Development Center<br>94-50 159th Street<br>York College,<br>Room S 107<br>Jamaica, NY 11451<br>(718) 262-2880<br>Fax (718) 262-2881 | 16. Small Business Development Center - Rutgers University, University Heights<br>49 Bleeker Street<br>Newark, NJ 07102<br>(973) 353-1927<br>Fax (973) 353-1110                |
| 17. Small Business Development Center - Kean University<br>East Campus, Room 242<br>Union, NJ 07083<br>(908) 527-2946<br>Fax (908) 527-2960                          | 18. New Jersey Air Services Development Office<br>Newark Liberty International Airport Building #80 - Second Floor<br>Newark, NJ 07114<br>(973) 961-4278<br>Fax (973) 961-4282 |
| 19. Caribbean-American Chamber of Commerce<br>Brooklyn Navy Yard Brooklyn,<br>NY 11205<br>(718) 834-4544<br>Fax (718) 834-9774                                       | 20. Manhattan Hispanic Chamber of Commerce<br>P.O. Box 3494<br>Grand Central Station<br>New York, NY 10163<br>(212) 683-5955<br>Fax (212) 683-5999                             |
| 21. Asian Women in Business<br>358 Fifth Avenue, Suite 504<br>New York, NY 10001<br>(212) 868-1368<br>Fax (212) 868-1373   | 22. Asian American Business Development Center<br>80 Wall Street, Suite 418<br>New York, NY 10005<br>(212) 966-0100<br>Fax (212) 966-2786                                      |

23. New York State Federation of Hispanic  
Chambers of Commerce  
2710 Broadway  
New York, NY 10025  
(212) 222-8300  
Fax (212) 222-8412

All such requests shall be in writing addressed to the Construction Manager. If any such firm is determined to be eligible it shall only be by a writing over the name of the Construction Manager. In the event that such firm is found not to be eligible, the Construction Manager will only consider as a substitute for such firm, a firm listed in the Authority's MBE/WBE Directory available on-line.

Please note that the Contractor must submit the names of proposed MBEs/WBEs for work on this Contract if their names do not appear in the Authority's MBE/WBE Directory available on-line in accordance with the requirements of this clause and all other requirements of this Contract. MBEs/WBEs proposed as lessors of equipment or Materialmen shall be deemed "Subcontractors" for the purpose of this numbered clause and the clause hereof entitled "Assignments and Subcontracts" but shall not be deemed Subcontractors for any other purpose. However only sixty percent (60%) of the amounts paid by the Contractor to such Materialmen who are MBEs/WBEs, except in the case of firms who themselves manufacture materials for use under the Contract, shall be allowed in computing the percentages of the Lump Sum required to be paid to MBEs/WBEs hereunder.

Nothing herein shall be deemed to supersede or to otherwise modify the clause of the Form of Contract entitled "Assignments and Subcontracts".

## **9. INSPECTION OF SITE**

Each bidder or his authorized representative must make proper arrangements with the Construction Manager at the construction site before inspecting the construction site. To make such arrangements call Construction Manager at 212.748.1001.

## **10. QUESTIONS BY BIDDERS**

Questions by prospective bidders concerning the Contract may be addressed to Construction Manager, who, however, is authorized only to direct the attention of prospective bidders to various portions of the Contract so that they may read and interpret such portions for themselves. Neither Construction Manager nor any other employee or representative of the Construction Manager is authorized to give interpretations of any portion of the Contract or to give information as to the requirements of the Contract in addition to that contained in the Contract. Interpretations of the Contract or additional information as to its requirements, where necessary, shall be communicated to bidders only by written addendum, which addendum shall be considered part of this Contract. Accordingly, nothing contained herein and no representation, statement or promise, oral or in writing, of the Construction Manager, or 1 WTC its Directors, officers, agents, representatives or employees shall impair or limit the effect of the warranties of the Contractor contained in the clause of the Form of Contract entitled "Contractor's Warranties" or elsewhere in this Contract. The provisions of this clause shall apply to questions addressed by prospective bidders both before and after their receipt of Contract documents.

## **11. AUTHORITY SECURITY REQUIREMENTS**

Bidder shall comply with the security requirements set forth herein both pre- and post-contract award, including, without limitation, the requirements set forth in Rider S (Site Security Requirements).

The Authority has facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. 1 WTC and Construction Manager reserve the right to impose multiple layers of security requirements on the Contractor, its staff and Subcontractors and their staffs depending upon the level of security required, as determined by 1 WTC. This includes the Contractor's responsibility to perform Contractor/Subcontractor identity checks and background screening, including, but not limited to: inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; multi-year check of personal, employment and/or credit history. The Contractor shall, and shall instruct its Subcontractors, to cooperate with Construction Manager's staff in adopting security requirements. These security requirements may include, but are not limited to the following:

- a. Access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like;
- b. Issuance of photo identification cards:

No person will be permitted on or about the construction site without a photo identification badge approved by the Construction Manager. The Construction Manager will provide such identification badges for Contractor and Subcontractor staff, and Materialmen, if necessary. All employees of the Contractor, Subcontractors and Materialmen shall wear identification badges in a conspicuous and clearly visible position whenever they are working at the construction site.

- c. Access control, inspection, and monitoring by security guards:

The Construction Manager may provide for construction site access control, inspection and monitoring by Construction Manager retained security guards. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and work at the construction site at its own expense.

- d. Neither the Contractor nor any Subcontractors shall issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to 1 WTC or the Authority or the Work performed in connection with this Contract without first obtaining the written approval of 1 WTC. Such approval may be withheld if for any reason 1 WTC believes that the publication of such information would be harmful to the public interest or is in any way undesirable.
- e. Under no circumstances shall the Contractor nor any Subcontractor communicate in any way with any consultant, department, board, agency, commissioner or other organization or any person whether governmental or private in connection with the Work to be performed hereunder, unless required by Law, except upon prior written approval and instructions of 1 WTC, provided, however that data from manufacturers and suppliers of material may be obtained when such data is necessary to the performance of the Work.

- f. Neither the Contractor nor any Subcontractors shall provide access to the construction site to anyone other than their employees and others who are approved by 1 WTC to be directly involved in performing Work at the construction site.
- g. Neither the Contractor nor any Subcontractor is permitted to take photographs or video recordings or make sketches at the construction site, except when necessary to perform the Work under this Contract. Upon request, any photograph, video recording or sketch taken at the construction site shall be submitted to 1 WTC to ascertain compliance with this paragraph.

The Contractor shall be required to have its staff and that of its Subcontractors undergo a criminal history background check and shall furnish proof to 1 WTC, in a form acceptable to 1 WTC, that such check has been performed. No employee of the Contractor or any Subcontractor will be permitted at the construction site without proof that such check has been performed.

In addition, 1 WTC or Construction Manager may increase and/or upgrade security requirements for the Contractor, its staff and Subcontractors and their staffs during the term of this Contract to address changing security conditions and/or new governmental regulations.

Should 1 WTC or Construction Manager increase and/or upgrade security requirements after acceptance of the Contractor's Lump Sum Proposal, the Contractor will be compensated for the additional cost of such increase and/or upgrade in accordance with the clause of the Contract entitled, "Extra Work."

#### **11A. PROTECTION OF SECURITY INFORMATION**

1. The Contractor, Subcontractors and others requiring access to Confidential and Privileged (C&P) security information and Sensitive Security Information (SSI) shall also be required to implement uniform security procedures regarding the identification, handling, care and storage of C&P security information belonging to 1 WTC or Construction Manager; and SSI as defined in 49 CFR Parts 15 and 1520. 1 WTC or Construction Manager C&P security information is information that, if subject to unauthorized disclosure, access, alteration, loss or misuse would be detrimental to the public interest and/or might adversely affect, or compromise, public safety or security as it relates to Authority or 1 WTC property, facilities, systems and/or operations, or which might otherwise adversely affect homeland security.

The Authority has developed requirements and other safeguards that are necessary both to prevent unauthorized disclosure of C&P security information and to control the authorized disclosure of this information for use internally within the Authority and when released by the Authority to outside entities for legitimate business purposes. These requirements and safeguards may be found in the Handbook for Protecting Security Information (July 8, 2005) and the Sub-Project's Security Information Practices and procedures manual, both of which will be made available to the Contractor and each Subcontractor. Each Contractor, Subcontractor and their staffs shall follow and implement the requirements and safeguards set forth in the aforementioned Handbook. Further, the staffs of the Contractor, Subcontractors and others requiring access to C&P security information and SSI shall also be required to sign a Non-Disclosure/Confidentiality Agreement (NDA), or an Acknowledgement thereof where an executed NDA is in place, prior to performing work activities in connection with this Contract, the form of which is set forth in Rider F (Non-Disclosure and Confidentiality Agreement).

2. The Contractor, each Subcontractor and others requiring access to C&P security information and SSI, shall appoint a senior management level employee to be the company's Security Information Manager (SIM). The SIM is responsible for implementing and maintaining the firm's

Program For Protecting C&P security information and/or SSI. A deputy SIM (DSIM) shall also be appointed in case the SIM is unavailable for any reason.

3. The SIM shall prepare an Authorized Personnel Agreement Sub-Project List - a list of employees who are authorized to access C&P security information and the date each executed the NDA. A copy of this list shall be provided to 1 WTC and the Construction Manager and updated monthly. This list will be used to verify that individuals have been briefed into the program and are certified for access to C&P security information.

Protection of C&P security information and SSI is a material obligation of the Contractor hereunder and failure to do so is grounds for termination for cause.

In addition, an individual's access to C&P security information and SSI may be contingent upon the satisfactory completion of a security background check for such individual and proof of the implementation of satisfactory procedures for safeguarding such C&P security information and/or SSI.

Unauthorized disclosure of SSI may be grounds for a civil penalty and/or other enforcement or corrective action by the United States Department of Transportation and/or the United States Department of Homeland Security against individuals or entities they deem appropriate including but not limited to the Contractor, its Subcontractors and their staffs.

Corrective action may include issuance of an order requiring retrieval of SSI to remedy unauthorized disclosure or an order to cease future unauthorized disclosure.

4. The Contractor shall include and require the inclusion of this numbered provision in all subcontracts and contracts for Work, services or supplying materials required for this Contract of every tier.

#### **11B. PREVAILING RATE OF WAGE CERTIFICATION**

The bidders' attention is directed specifically to the clause of the Form of Contract entitled "Prevailing Rate of Wage" and to the fact that the Construction Manager requires a certification in writing from the successful bidder, in such form as may be required pursuant to such clause, that he has paid and caused his Subcontractors to pay at least the prevailing rate of wage and supplements required by such clause. This certification is required prior to his receipt of any payment from the Construction Manager hereunder as provided in the clauses of the Form of Contract entitled "Monthly Advances" and "Final Payment" or at any other time.

**11C. CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, SUSPENSION, DEBARMENT, DISQUALIFICATION, PREQUALIFICATION DENIAL OR TERMINATION, ETC; DISCLOSURE OF OTHER REQUIRED INFORMATION**

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the bidder and each parent and/or affiliate of the bidder has not (a) been indicted or convicted in any jurisdiction; (b) been suspended, debarred, found not responsible or otherwise disqualified from entering into contracts with any governmental agency or been denied a government contract for failure to meet prequalification standards; (c) had a contract terminated by any governmental agency for breach of contract or for any cause related directly or indirectly to an indictment or conviction; (d) changed its name and/or Employer Identification Number (taxpayer identification number) following its having been indicted, convicted, suspended, debarred or otherwise disqualified, or had a contract terminated as more fully provided in (a), (b) and (c) above; (e) ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal; (f) been denied a contract by any governmental agency for failure to provide the required security, including bid, payment or performance bonds or any alternative security deemed acceptable by the agency letting the contract; (g) failed to file any required tax returns or failed to pay any applicable federal, state or local taxes; (h) had a lien imposed upon its property based on taxes owed and fines and penalties assessed by any agency of the federal, state or local government; (i) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority; (j) had any sanctions imposed as a result of a judicial or administrative proceeding with respect to any professional license held or with respect to any violation of a federal, state or local environmental law, rule or regulation; and (k) shared space, staff, or equipment with any business entity.

The foregoing certification as to "(a)" through "(k)" shall be deemed to have been made by the bidder as follows: if the bidder is a corporation, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each director and officer, as well as, to the best of the certifier's knowledge and belief, each stockholder with an ownership interest in excess of 10%; if the bidder is a partnership, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth an explanation for its uncertainty.

Notwithstanding that the certification may be an accurate representation of the bidder's status with respect to the enumerated circumstances provided for in this clause as requiring disclosure at the time that the bid is submitted, the bidder agrees to complete Rider K (Project Corruption Prevention Program) as part of its bid, require all Subcontractors and Materialmen to complete Rider K (Project Corruption Prevention Program) and to immediately notify the Construction Manager in writing of any change in circumstances during the period of irrevocability, or any extension thereof.



The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Construction Manager and that the Construction Manager will rely on its truth and accuracy in awarding this Contract. In the event that the Construction Manager determines at any time prior or subsequent to the award of the Contract that the bidder has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement pursuant to this clause which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstances provided for in this clause as requiring disclosure, the Construction Manager may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids and may, in addition to exercising any other rights or remedies available to it, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of 1 WTC". In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a bidder, and that in each instance the Construction Manager will evaluate the reasons therefor provided by the bidder.

Under certain circumstances the bidder may be required as a condition of this contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by 1 WTC. Said Monitor shall be charged with, among other things, auditing the actions of the bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with 1 WTC and the Authority.

As used in this clause, the following terms shall mean:

Affiliate - An entity in which the parent of the bidder owns more than fifty percent (50%) of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the bidder also owns more than fifty percent (50%) of the voting stock.

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, quasi-public agencies, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

Employer Identification Number - The tax identification number assigned to firms by the federal government for tax purposes.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting or investigative agency, including an inspector general of a governmental agency or public authority, and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or Federal, state, and local inquiries into tax returns.

Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the bidder by whatever titles known.

Parent - An individual, partnership, joint venture or corporation which owns more than fifty percent (50%) of the voting stock of the bidder.

Space Sharing - Space shall be considered to be shared when any part of the floor space utilized by the submitting business at any of its sites is also utilized on a regular or intermittent basis for any purpose by any other business or not-for-profit organization, and where there is no lease or sublease in effect between the submitting business and any other business or not-for-profit organization that is sharing space with the submitting business.

Staff Sharing - Staff shall be considered to be shared when any individual provides the services of an employee, whether paid or unpaid, to the bidder and also, on either a regular or irregular basis, provides the services of an employee, paid or unpaid, to one or more other business(es) and/or not-for-profit organization(s), if such services are provided during any part of the same hours the individual is providing services to the bidder or if such services are provided on an alternating or interchangeable basis between the bidder and the other business(es) or not-for-profit organization(s). "The services of an employee" should be understood to include services of any type or level, including managerial or supervisory. This type of sharing may include, but is not limited to, individuals who provide the following services: telephone answering, receptionist, delivery, custodial, and driving.

Equipment Sharing - Equipment shall be considered to be shared whenever the bidder shares the ownership and/or the use of any equipment with any other business or not-for-profit organization. Such equipment may include, but is not limited to, telephones or telephone systems, photocopiers, computers, motor vehicles, and construction equipment. Equipment shall not be considered to be shared under the following two circumstances: when, although the equipment is owned by another business or not-for-profit organization, the bidder has entered into a formal lease for the use of the equipment and exercises exclusive use of the equipment; or when the bidder owns equipment that it has formally leased to another business or not-for-profit organization, and for the duration of such lease the bidder has relinquished all right to the use of such leased equipment.

**12. NON-COLLUSIVE BIDDING AND CODE OF ETHICS CERTIFICATION;  
CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION,  
PERCENTAGE, BROKERAGE, CONTINGENT FEE OR OTHER FEE**

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that: (a) the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; (b) the prices quoted in its bid have not been and will not be knowingly disclosed, directly or indirectly, by the bidder prior to the official opening of such bid to any other bidder or to any competitor; (c) no attempt has been made and none will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition; (d) this organization has not made any offers or agreements, or given or agreed to give anything of value (see definition of "anything of value" appearing in the clause of the Form of Contract entitled "No Gifts, Gratuities, Offers of Employment, etc.") or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics and Financial Disclosure dated as of April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Questions by Bidders"), nor does this organization have any knowledge of any act on the part of an Construction Manager employee or former Construction Manager employee relating either directly or indirectly to this

organization which constitutes a breach of the ethical standards set forth in said Code; (e) no person or selling agency, other than a bona fide employee or bona fide established commercial or selling agency maintained by the bidder for the purpose of securing business, has been employed or retained by the bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent or other fee would be paid to such person or selling agency; the bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.

The foregoing certification as to "(a)", "(b)", "(c)", "(d)" and "(e)" shall be deemed to have been made by the bidder as follows: if the bidder is a corporation, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each parent, affiliate, director and officer of the bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the bidder with an ownership interest in excess of ten percent (10%); if the bidder is a partnership, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty.

Notwithstanding that the bidder may be able to make the foregoing certification at the time the bid is submitted, the bidder shall immediately notify the Construction Manager in writing during the period of irrevocability of bids on this Contract or any extension of such period, of any change of circumstances which might under this clause make it unable to make the foregoing certification or required disclosure. The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Construction Manager and that the Construction Manager will rely on its truth and accuracy in awarding this Contract. In the event that the Construction Manager should determine at any time prior or subsequent to the award of this Contract that the bidder has falsely certified as to any material item in the foregoing certification or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certification required to be disclosed, the Construction Manager may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids on Construction Manager or 1 WTC contracts and may, in addition to exercising any other rights or remedies it may have, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of 1 WTC".

In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a bidder, and that in each instance the Construction Manager will evaluate the reasons therefor provided by the bidder.

Under certain circumstances the bidder may be required as a condition of this contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor shall be charged with, among other things, auditing the actions of the bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with 1 WTC and the Authority.

**13. BIDDER ELIGIBILITY FOR AWARD OF CONTRACTS – DETERMINATIONS BY AN AGENCY OF THE STATE OF NEW YORK OR NEW JERSEY CONCERNING ELIGIBILITY TO RECEIVE PUBLIC CONTRACTS**

Bidders are advised that the Authority has adopted a policy, which Construction Manager and 1 WTC adopt as set forth herein, to the effect that in awarding its contracts it will honor any determination by an agency of the State of New York or New Jersey that a bidder is not eligible to bid on or be awarded public contracts because the bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The Authority policy permits a bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Authority contract and then to establish that it is eligible to be awarded the contract on which it has bid because (i) the state agency determination relied upon does not apply to the bidder, or (ii) the state agency determination relied upon was made without affording the bidder the notice and hearing to which the bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state agency determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or a violation of a prevailing rate of wage law.

The full text of the resolution adopting the Authority policy may be found in the Minutes of the Authority's Board of Commissioners meeting of September 9, 1993.

**14. CONSTRUCTION SKILLS 2000 – APPRENTICESHIP PROGRAM**

The Authority is a participant in Construction Skills 2000, a cooperative program among New York City schools, unions and public agencies. Construction Skills 2000 creates career opportunities in the construction industry for high school graduates by providing a systematic pathway into union-sponsored, skilled trade apprenticeship programs. The Authority encourages Contractors and their Subcontractors to maximize the use of apprentices under the applicable collective bargaining agreements or as contained in the applicable program approved by the New York State Department of Labor. The Contractor's plan for utilizing apprentices will be discussed at the pre-construction meeting.

Each Subcontractor proposed for approval under the Contract whose total amount of subcontracts under this Contract is greater than \$1 Million Dollars and each bidder (except as set forth in the certification below) will be required to certify as to their participation in a New York State-registered apprenticeship program.

**15. CERTIFICATION OF PARTICIPATION IN A STATE-REGISTERED  
APPRENTICESHIP PROGRAM**

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the bidder participates in an apprenticeship program registered by the New York State Department of Labor. Participation in such an apprenticeship program shall mean that the bidder either (a) is a signatory to a collective bargaining agreement with a labor organization which sponsors an apprenticeship program registered with the New York State Department of Labor or (b) individually sponsors an apprenticeship program registered by the New York State Department of Labor and, in the case of both (a) and (b) above, such apprenticeship program shall be in the trade(s) in which Work is to be performed. This clause shall not apply to bidders who will perform all Work at the construction site through the use of Subcontractors.

The foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth an explanation for its uncertainty.

Notwithstanding that the certification may be an accurate representation of the bidder's status with respect to the enumerated circumstances provided for in this clause as requiring disclosure at the time that the bid is submitted, the bidder agrees to immediately notify the Construction Manager in writing of any change in circumstances during the period of irrevocability, or any extension thereof.

The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Construction Manager and that the Construction Manager will rely on its truth and accuracy in awarding this Contract. In the event that the Construction Manager determines at any time prior or subsequent to the award of the Contract that the bidder has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement pursuant to this clause which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstances provided for in this clause as requiring disclosure, the Construction Manager may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids and may, in addition to exercising any other rights or remedies available to it, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of 1 WTC". In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.).

**BID PROPOSAL FORM (6 Pages)**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

**DATE:**

**TRADE:**

**BID DUE DATE:**

To Tishman Construction Corporation, a Delaware corporation:

The undersigned<sup>3</sup>

**BIDDERS NAME:**

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**TYPE OF ENTITY (see Note "3" below):**

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(hereinafter called, "the Contractor") hereby offers to perform all the obligations and to assume all the duties and liabilities of the Contractor provided for in the annexed Contract on the terms and conditions contained therein, in all Riders referenced therein and all terms and conditions contained in these Instructions to Bidders Sections 1 through 15, at the price set forth in the attached Bid Proposal.

This offer shall be irrevocable for one hundred eighty (180) days after the date on which the Construction Manager opens this Proposal.

To induce the acceptance of this Proposal, the undersigned hereby makes each and every certification, statement, assurance, representation and warranty made by the Contractor in said Contract. Moreover as a condition to receipt and consideration by the Construction Manager of the Proposal whether or not it is accepted, the undersigned agrees that all information of any nature whatsoever, regardless of the form of the communication, received from the undersigned (including its officers, agents, or employees) by the Construction Manager and 1 WTC, its Directors, officers, agents or employees, and notwithstanding any statement therein to the contrary, has not been given in confidence and may be used or disclosed by or on behalf of the Construction Manager or 1 WTC without liability of any kind except as may arise under letters patent of the undersigned, if any.

Unless expressly stated otherwise, the Instructions for Bidders and Bid Proposal Form, all papers required by it and submitted in connection herewith at any time, said Form of Contract, and all papers made part of the Contract by the terms of the Form of Contract are made part of this Proposal

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<sup>3</sup> Insert bidder's name at the top of the page. After the bidder's name, insert one of the following phrases:

If a corporation, give state of incorporation, using the phrase, "a corporation organized under the laws of the State of \_\_\_\_\_."

If a partnership, give full names of partners, using also the phrase, "co-partners doing business under the firm name of \_\_\_\_\_."

If an individual using a trade name, give individual name, using also the phrase, "an individual doing business under the trade name of \_\_\_\_\_."

If a joint venture, give the information required above for each participant in the joint venture.

**BID PROPOSAL FORM (6 Pages)**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

**DATE:**

**TRADE:**

**BID DUE DATE:**

In accordance with the bid documents listed below and pursuant to your letter dated \_\_\_\_\_, we submit our Proposal herewith:

1. General Form of Agreement
2. Rider "A", General Addendum, dated November 30, 2006, as modified
3. Rider "B", List of Drawings and Specifications
4. Rider "C", Alternatives & Unit Prices
5. Rider "D", Insurance Rider, dated November 30, 2006, as modified
6. Rider "DX" Owner Controlled Insurance Program (or OCIP) [Used Only If OCIP Provided]
7. Rider "E", [Intentionally Deleted]
8. Rider "F", Non-Disclosure and Confidentiality Agreement
9. Rider "G", Sustainable Construction Requirements, dated April 11, 2007, as modified
10. Rider "H", Requirements for Work in PATH Right of Way, dated June 16, 2006
11. Rider "I", Port Authority of New York & New Jersey Sales and Use Tax Requirements;  
Port Authority of New York & New Jersey Sales Tax Letter, dated \_\_\_\_\_  
New York State Contractor Exempt Purchase Certificate Form S120.1  
New York State Certificate of Capital Improvement Form ST-124
12. Rider "J", Temporary Services, dated October 2, 2006
13. Rider "K", Project Corruption Prevention Program, dated January 8, 2007
14. Rider "L", Payment Procedures
15. Rider "M", Tishman Construction Safety Guidelines, dated November 3, 2005
16. Rider "N", Port Authority of New York & New Jersey WTC Site Rules and Regulations, dated January 1, 2006
17. Rider "O", Available Documents
18. Rider "P", [Intentionally Deleted]
19. Rider "Q", Above and Below Grade Site Logistics Plans
20. Rider "R", [Intentionally Deleted]
21. Rider "S", Site Security Requirements
22. Rider "T", Milestone Dates and Liquidated Damages
23. Rider "U", Additional Provisions [Used Only for Certain Trades]

**BIDDER'S NAME:** \_\_\_\_\_

**BID PROPOSAL FORM (6 Pages)**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

**TRADE:**  
**BID DUE DATE:**

**DATE:**

**A. BASE BID BREAKDOWN**

Perform the following (INSERT TRADE NAME) work in strict accordance with the bid documents (Cost for Performance/Payment Bond not included). The amount of the "Total Base Bid", including any price adjustment resulting from Bid Addenda, shall be filled in by the Bidder in Clause 17 of the Contract entitled "General Agreement" and such amount shall be defined as the "Lump Sum" for purposes of this Contract.

1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
TOTAL BASE BID:	\$ _____

**B. BIDDER'S ALTERNATES**

Bidder to fully describe suggested changes to expedite Project and/or reduce costs. (Reduction on cost to be indicated and not included in Base Bid). (Attach additional sheets as required).

**C. SCHEDULE**

1. Time required from contract award to start of field work \_\_\_\_\_/wks.
2. Time required from start of field work to completion \_\_\_\_\_/wks

**D. WORK EXPERIENCE**

1. This bidder has performed work directly for the Port Authority Of New York & New Jersey in the past ten (10) years ☐yes ☐no

The undersigned hereby designates the following as the bidder's name and office <sup>4</sup> :	_____ _____ _____
The telephone number of the bidder is:	_____
The fax number of the bidder is:	_____
The E-Mail address of the bidder is:	_____

(PAGE 3 OF 6)

<sup>4</sup> Insert office address.



**BID PROPOSAL FORM (6 Pages)**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

**DATE:**

**TRADE:**  
**BID DUE DATE:**

**SIGNATURE AND CERTIFICATE OF AUTHORITY<sup>5</sup>**

Dated, \_\_\_\_\_, 20

(Signature of individual or name of corporation or partnership)	_____
(Signature of agent, partner or corporate officer)	By <sup>6 7</sup> _____
(Acknowledgment of signature to be taken on proper form on following page(s))	_____

**CERTIFICATE OF AUTHORITY, IF BIDDER IS A CORPORATION**

I, the undersigned, as Secretary of the corporation submitting the foregoing Proposal, hereby certify that under and pursuant to the by-laws and resolutions of said corporation, each officer who has signed said Proposal on behalf of the corporation is fully and completely authorized so to do.

(Corporate Seal)

\_\_\_\_\_  
(PAGE 4 OF 6)

<sup>5</sup> If bidder is a joint venture, insert signatures as appropriate for one participant of the joint venture on this page and attach and complete an additional signature sheet in the same form as appears on this page for each other participant as required.

<sup>6</sup> If Proposal is signed by an officer or agent, give title.

<sup>7</sup> **NOTE:** The foregoing signature shall be deemed to have been provided with full knowledge that the foregoing Proposal, the accompanying Contract booklet, as well as any certification, statement, assurance, representation, warranty, schedule or other document submitted by the bidder with the Proposal will become a part of the records of the Construction Manager and that the Construction Manager will rely in awarding the Contract on the truth and accuracy of such Proposal and each such certification, statement, assurance, representation, warranty and schedule made therein by the Contractor. Knowingly submitting a false statement in connection with any of the foregoing may be the basis for prosecution for offering a false instrument for filing (see, e.g., N.Y. Penal Law, Section 175.30 et seq.).

**BID PROPOSAL FORM (6 Pages)**  
**WORLD TRADE CENTER - TOWER ONE**  
**NEW YORK, NEW YORK**

**DATE:**

**TRADE:**  
**BID DUE DATE:**

**ACKNOWLEDGMENT<sup>8</sup>**

**ACKNOWLEDGMENT OF BIDDER, IF A CORPORATION**

State of _____	
_____	SS:
County of _____	

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_, that he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation; and that he signed his name thereto by like order.

(Notary Seal)

\_\_\_\_\_  
(Notary Signature)

**ACKNOWLEDGMENT OF BIDDER, IF A PARTNERSHIP**

State of _____	
_____	SS:
County of _____	

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known and known to me to be one of the members of the firm of \_\_\_\_\_, described in and who executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of said firm.

(Notary Seal)

\_\_\_\_\_  
(Notary Signature)

(PAGE 5 OF 6)

<sup>8</sup> If bidder is a joint venture, insert signature as appropriate for one participant of the joint venture on this page and attach and complete an additional Acknowledgment sheet in the same form as appears on this page for each other participant as required

**BID PROPOSAL FORM (6 Pages)**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

**DATE:**

**TRADE:**  
**BID DUE DATE:**

**ACKNOWLEDGMENT OF BIDDER, IF AN INDIVIDUAL**

State of _____	
_____	SS:
County of _____	

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 , before me personally came and appeared \_\_\_\_\_ to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

(Notary Seal)

\_\_\_\_\_  
(Notary Signature)

**STATEMENT ACCOMPANYING PROPOSAL<sup>9</sup>**

Names and residences of officers, if bidder is a corporation:

Name	Title	Residence <sup>10</sup>

Names and residences of partners, if bidder is a partnership:

Name	General or Limited Partner	Residence <sup>11</sup>

Bidder's residence, if an individual<sup>12</sup>

(PAGE 6 OF 6)

<sup>9</sup> If bidder is a joint venture, insert signature as appropriate for one participant of the joint venture on this page and attach and complete an additional Statement Accompanying Proposal sheet in the same form as appears on this page for each other participant as required.

<sup>10</sup> Give street and number of residence. Do not give business address.

<sup>11</sup> Give street and number of residence. Do not give business address.

<sup>12</sup> Give street and number of residence. Do not give business address.

CONTRACT WTC-XXX.XXX

**FORM OF CONTRACT  
CHAPTER I  
GENERAL PROVISIONS**

**16. DEFINITIONS**

To avoid undue repetition, the following terms whenever they occur in this Contract or any of the other papers forming a part of the Contract shall be construed as follows:

"1 WTC" shall mean 1 World Trade Center LLC, a Delaware Limited Liability Company, having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York, 10003 ("1 WTC"). Any reference to 1 WTC in the context of performing any duty, conducting any action, rendering a decision, or having any discretion shall be performed by the 1 WTC Representative. 1 WTC shall have all rights and benefits of Construction Manager as set forth herein.

"1 WTC Indemnatee Group" shall mean 1 WTC, Authority, Construction Manager, Silverstein Freedom Tower Development LLC and all other Additional Insureds referred to in Rider D (Insurance Rider).

"1 WTC Representative" shall mean the Director of the World Trade Center Construction Department or his designee. 1 WTC Representative is the only authorized representative to act, or receive, on behalf of 1 WTC with respect to any duty, obligation, notice or other action set forth in this Contract.

"Authority" shall mean the Port Authority of New York and New Jersey.

"Construction Manager" shall mean Tishman Construction Corporation, a Delaware corporation, having an office at 666 Fifth Avenue, New York, New York 10103, acting as agent for 1 WTC hereunder, and shall be generally responsible for the managing, supervision, coordination, and direction of all contractors in regards to the Work.

"Contract" shall mean, in addition to this Form of Contract, the Instructions for Bidders and Bid Proposal Form, Sections 1-15, the Proposal, all Riders listed herein under "List of Riders," the Construction Manager's acceptance, the Specifications and the Contract Drawings (including written addenda issued over the name of the Construction Manager), all of which are made part hereof as though herein set forth in full. The Contract as so defined shall constitute the complete and exclusive statement of the terms of the agreement between the parties and the Contract may not be explained or supplemented by course of dealing, usage of trade or course of performance. However, the Riders may be unilaterally amended from time to time by 1 WTC, which amendments constitute terms and conditions of the Contract. To the extent there is any conflict between documents forming the Contract, the provisions of the Riders shall control over all other provisions, followed by the terms of this Form of Contract followed by all other terms and conditions that form the Contract. All Riders that include blanks or forms shall be filled in or completed by Contractor, who shall also obligate Subcontractors and Materialmen to fill in such blanks and complete such forms.

The term "days" or "calendar days" in reference to a period of time shall mean consecutive calendar days, Saturdays, Sundays and holidays, included.

"Design Team" shall mean all of the design professionals hired by 1 WTC, either directly or indirectly to provide professional services with respect to the Project including without limitation Architect of Record, Engineer of Record and Design Consultants.

The term "construction site" or words of similar import shall mean the World Trade Center, New York, New York.

"Work" shall mean all structures, equipment, plant, labor, materials (including materials and equipment, if any, furnished by the Construction Manager) and other facilities and all other things necessary or proper for or incidental to performing the construction at the World Trade Center site; and "performance of Work" and words of similar import shall mean the furnishing of such facilities and the doing of such things.

"Work required by the Contract Drawings in their present form" or words of similar import shall include all Work required by or reasonably inferable from the Specifications in their present form (whether or not shown upon the Contract Drawings), all Work shown upon or reasonably inferable from the Contract Drawings in their present form (whether or not mentioned in the Specifications), and all Work involved in or incidental to the accomplishment of the results intended by the Specifications and Contract Drawings in their present form (whether or not mentioned therein or shown thereon)."

"Equipment" and "plant" shall include construction equipment and plant rented as agent for the Construction Manager.

"Extra Work" shall mean Work required by the Construction Manager pursuant to the clause hereof entitled "Extra Work Orders" which is in addition to that required by the Contract Drawings in their present form.

"Contract Drawings" shall mean the drawings and specifications designated in **Rider B** (List of Drawings and Specifications), and, except as used in the phrase "Contract Drawings in their present form", shall include any future alterations and revisions to such drawings and specifications. Any reference herein to Specifications shall mean specifications contained within the Contract Drawings.

"Shop Drawings" shall mean all drawings, diagrams, illustrations, schedules, including supporting data, which are specifically prepared for this Contract and submitted by the Contractor pursuant to the requirements of the Specifications or the Construction Manager to illustrate some portion of the Work. The terms "shop drawings", "placing drawings" and "working drawings" are used interchangeably in this Contract.

"Catalog Cuts" shall mean all standard drawings, diagrams, illustrations, brochures, schedules, performance charts and instructions submitted by the Contractor pursuant to the requirements of the Specifications or the Construction Manager to illustrate some portion of the Work.

"Chief Engineer" shall mean the Chief Engineer of the Authority for the time being, or his successor in duties, acting personally.

"Engineer" shall mean the Chief Engineer, acting either personally or through his duly authorized representatives acting within the scope of the particular authority vested in them.

"Architect of Record" shall mean Skidmore Owings & Merrill LLP.

"Engineer(s) of Record" shall mean the engineers hired by 1 WTC to perform professional engineering services for the Project who have provided professional stamps to one or more of the Contract Drawings.

"Design Consultant" shall mean members of the Design Team who are not the Architect of Record or the Engineer of Record.

"Inspector" shall mean any representative of the Engineer designated by him as Inspector and acting within the scope of the particular authority vested in him.

"Integrity Monitor" shall have the meaning set forth in Section 18 (Access to Records) of this Form of Contract.

The term "permanent construction" shall include all construction, installation, structures, equipment and materials (including materials and equipment, if any, furnished by the Construction Manager to be constructed, installed or left by the Contractor at or about the construction site (or elsewhere in the possession of the Construction Manager after the completion of the Work (whether or not they are yet delivered or installed), even though they are subsequently to be removed by others. The terms, "permanent installation", "permanent structure", "permanent materials", and words of similar import shall have the same meaning as the term "permanent construction".

"Subcontractor" shall mean anyone who performs Work (other than or in addition to the furnishing of materials, plant or equipment) at or about the construction site, directly or indirectly for or in behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services or who performs Work which consists only of the operation of construction equipment of which he is the lessor.

"Materialman" shall mean anyone who furnishes materials, plant or equipment to the Contractor or any Subcontractor for use at or about the construction site in the performance of Work.

"Materialman" or "Subcontractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent or the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor himself.

"Workingman" or "workman" shall mean any employee of the Contractor or of a Subcontractor who performs personal labor or personal services at the construction site.

"Lump Sum" shall mean the amount stipulated in the clause hereof entitled "General Agreement".

"Notice" shall mean a written notice.

Whenever they refer to the Work or its performance, "directed", "required", "permitted", "ordered", "designated", "prescribed" and words of similar import shall mean directed, required permitted, ordered, designated or prescribed by the Construction Manager; and "approved", "acceptable", "satisfactory" and words of similar import shall mean approved by or acceptable or satisfactory to the Construction Manager; and "necessary", "reasonable", "proper", "correct" and words of similar import shall mean necessary, reasonable, proper or correct in the judgment of the Construction Manager.

Whenever "including", "such as" or words of similar import are used, the specific things thereafter enumerated shall not limit the generality of the things preceding such words.

## 17. GENERAL AGREEMENT<sup>3</sup>

The Contractor agrees to perform the construction at the World Trade Center site and to furnish all structures, equipment, plant, labor, materials and other facilities and to do all other things necessary or proper therefor or incidental thereto, all in strict accordance with the Contract Drawings designated in **Rider B** (Contract Drawings and Specifications) and any future changes therein; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon him by this Contract. The furnishing of equipment and plant, however, shall be subject to the provisions of the clause hereof entitled "Agency for Rental of Construction Equipment".

The Construction Manager agrees to pay to the Contractor and the Contractor agrees to accept from the Construction Manager, in full consideration for the performance by the Contractor of his duties and obligations under this Contract and the whole thereof, a compensation of:

**One Hundred Fifteen Million Dollars and Zero Cents (\$115,000,000.00)** (throughout this Contract called the "Lump Sum"), and such compensation only, subject only to the express provisions of this Contract specifically setting forth actual, defined additions to or deductions from such compensation.

The enumeration in this Form of Contract and in the Specifications of particular things to be furnished or done at the Contractor's expense, or without cost or expense to the Construction Manager, or without additional compensation to the Contractor shall not be deemed to imply that only things of a nature similar to those enumerated shall be so furnished and done.

## 18. ACCESS TO RECORDS

The Construction Manager and 1 WTC shall have access during normal business hours to all records and documents of the Contractor relating to any amounts for which the Contractor has been compensated, or claims it should be compensated, by the Construction Manager by payment determined on any basis other than by payment of a lump sum or unit price amount agreed upon in writing by the Contractor and the Construction Manager; provided, however, such access shall extend to certified payroll records as described in the clause of the Form of Contract entitled "Prevailing Rate of Wage" regardless of the method by which the Contractor is compensated under this Contract. The Contractor shall obtain for the Construction Manager and/or 1 WTC similar access to similar records and documents of Subcontractors. Such access shall be given or obtained both before and within a period of three years after Final Payment to the Contractor; provided, however, that if within the aforesaid three (3) year period the Construction Manager or 1 WTC has notified the Contractor in writing of a pending claim by the Construction Manager or 1 WTC under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of his Subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six (6) years from the date of Final Payment with respect to the records and documents involved.

In the event that the Authority hires an integrity monitor in connection with the Project ("Integrity Monitor"), then the Contractor, and all Subcontractors and Materialmen of any tier, will cooperate fully with the Integrity Monitor, 1 WTC and the Authority, including but not limited to providing complete access to all personnel and records related to the performance of this Contract. Failure to comply with this provision shall be a material breach of this Contract.

No provision in this Contract giving the Construction Manager and/or 1 WTC a right of access to records and documents is intended to impair or affect any right of access to records and documents which the Construction Manager and/or 1 WTC and would have in the absence of such provision.

<sup>3</sup> For sales tax exemptions, if any, see clause entitled "Exemptions from New York State and New York City Sales Taxes".

**19. AGENCY FOR RENTAL OF CONSTRUCTION EQUIPMENT AND  
PURCHASE OF MATERIALS NOT INCORPORATED IN PERMANENT  
CONSTRUCTION**

With respect to the performance of Work in the State of New York:

**A. General Provisions**

In light of the fact that the Authority has designated 1 World Trade Center LLC as its agent for certain purposes, the Contractor further agrees to act as the agent of the Authority, subject to the provisions of this numbered clause relating to such agency *(i)* for the rental of all construction equipment necessary or desirable for or incidental to the performance of the Contract (other than construction equipment owned and also used by the Contractor or owned and also used by any subcontractor) and *(ii)* for the purchase of materials not to be incorporated in the Permanent Construction but to be used or consumed in the performance of the Contract as provided in the clause in the Form of Contract entitled "Exemption From New York State and New York City Sales Taxes" and, in the exercise of such agency, to assume all the obligations and duties imposed upon him by this Contract. The Contractor may authorize any subcontractor to act as his subagent for such rental or purchase, subject to all the provisions of this Contract. "Construction equipment" as used in this numbered clause shall include plant.

The Authority will pay the *(i)* rental charges for said equipment directly to the lessors thereof, and *(ii)* purchase prices for said materials directly to the vendors thereof, but the charges so paid shall be deducted from the compensation payable to the Contractor under the Contract; provided, however, that the Authority will pay such charges, and the Contractor is authorized by the Authority to act as such agent, to the extent only that the charges or prices payable for such rental or purchase, as the case may be, do not exceed the compensation payable to the Contractor under the Contract; and provided further that the Contractor performs all the obligations relating to said agency imposed upon him by this Contract.

The Authority will provide the Contractor with a statement or other documentation to be furnished by him and the subcontractors to such lessors and materialmen who will identify this Contract as the one under which the Contractor is authorized to rent said equipment or purchase said materials and which will identify the site to which delivery must be made. The Contractor shall arrange for delivery of said equipment or materials directly to the construction site. Payment of the rental charges or purchase prices shall be made by the Authority on the basis of invoices made out to the Authority in which is contained the place of delivery and on which the Contractor has certified by endorsement that such construction equipment or materials is or are being or has or have been used in the performance of the Contract, said invoices to be submitted through the Contractor to the Authority at the time said equipment or materials is used at the construction site. In the event said invoices are not submitted promptly, at the time stated above, but are submitted at a time when, by reason of prior advances and payments to the Contractor or for his account, the amounts still payable to the Contractor in connection with the Contract are insufficient to pay said invoices, then the Authority shall not be liable to the lessors or vendors for any amounts in excess of said amounts still payable to the Contractor which remain in the possession of the Authority.



Notwithstanding the above agency arrangement, the Authority shall not be liable to lessors of construction equipment for any amounts except rental charges based on time of use of such equipment, nor shall the Authority be liable to vendors of construction materials for any amounts except the purchase price thereof, and the Contractor's agency is limited accordingly. All obligations incurred by the Contractor or subcontractors for any other expenses, including repairs and damages for breach of the rental agreement, shall be obligations incurred by the Contractor or subcontractors as principal not as agent of the Authority. Moreover, as between the Authority and the Contractor, the Contractor shall be responsible for all amounts due to lessors of construction equipment *and vendors of construction materials* notwithstanding the above agency arrangement.

The Contractor shall indemnify the Authority against any claim of any kind whatsoever made against the Authority by a lessor of construction equipment *or vendor of construction materials*, and the Contractor assumes the risk of all claims against him by any lessor of construction equipment *or vendor of construction materials*, including claims in connection with a subcontractor.

The agency provided for under this numbered clause shall not relieve the Contractor of any of his duties and obligations elsewhere provided for under this Contract.

**B. Option Not to Act as Agent**

Notwithstanding the provisions of A above, the Contractor shall have the right to elect not to act as agent of the Authority for the (i) rental of any particular item or items of said construction equipment, *or (ii) purchase of any construction materials*, in which event, with regard to any such rentals *or purchases* by the Contractor as principal and not agent, the provisions of A of this numbered clause shall be inapplicable as well as those provisions of the clause of the Form of Contract entitled "Exemption From New York State and New York City Sales Taxes", which relate to rental of construction equipment *and purchase of materials not incorporated in the Permanent Construction*.

**20. EXEMPTION FROM NEW YORK STATE AND NEW YORK CITY SALES TAXES**

**A. Materials Incorporated in Permanent Construction**

The attention of the Contractor is directed to the following provision of the New York Tax Law:

"§1115. Exemptions from sales and use taxes. (a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

\* \* \*

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in (i) erecting a structure or building (A) of an organization described in subdivision (a) of section eleven hundred sixteen, \* \* \* or (ii) adding to, altering or improving real property, property or land (A) of such an organization, \* \* \* as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such

structure, building or real property."

The Authority is an exempt organization of the type described in subdivision (a) of section eleven hundred sixteen.

In view of the foregoing, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such tangible personal property.

If (i) any claim is made against the Contractor by the State of New York or City of New York for such sales or compensating use taxes, or (ii) any claim is made against the Contractor by a materialman or a subcontractor on account of a claim against such materialman or subcontractor by the State of New York or City of New York for such sales or compensating use taxes, then the Authority will reimburse the Contractor in an amount equal to the amount of such tax required to be paid in accordance with the requirements of law, provided that:

- 1.) the Contractor, or the Contractor and any such subcontractor, as the case may be, have complied with such rules and regulations as may have been promulgated relating to the claiming of the exemption from such taxes and have filed all the forms and certificates required by the applicable laws, rules and regulations in connection therewith;
- 2.) the Authority is afforded the opportunity before any payment of tax is made, to contest said claim in the manner and to the extent that the Authority may choose and to settle or satisfy said claim and such attorney as the Authority may designate is authorized to act for the purpose of contesting, settling and satisfying said claim; and
- 3.) the Contractor, or the Contractor and any such subcontractor, as the case may be, give immediate notice to the Authority of any such claim, cooperate with the Authority and its designated attorney in contesting said claim and furnish promptly to the Authority and said attorney all information and documents necessary or convenient for contesting said claim, said information and documents to be preserved for six years after the date of Final Payment or longer if such a claim is pending or threatened at the end of such six years.

If the Authority elects to contest any such claim, it will bear the expense of such contest.

B. B. Rental of Construction Equipment

The rental by the Contractor or a subcontractor of construction equipment not owned by the Contractor or a subcontractor for use in the performance of the Contract will also not be subject to New York State or New York City sales or compensating use taxes, provided that:

- 1.) the Contractor's and any subcontractor's use of construction equipment rented from others, and any agreement for such rental, is based upon the agency arrangement provided for in the clause hereof entitled "Agency for Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction" and the Contractor and subcontractors have performed all their obligations under said clause;
- 2.) delivery of said equipment is to the construction site;
- 3.) the Contractor or subcontractor has furnished to the lessor the statement or other documentation from the Authority identifying this Contract as the one under which the Contractor or subcontractor has been authorized to rent said equipment and identifying the construction site to which delivery must be made;

- 4.) the invoice for said equipment is made out to the Authority and prescribes the place of delivery; and
- 5.) the amounts payable for rental of said equipment do not exceed the amount of compensation payable in connection with the Work.

In view of the above, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such rentals of equipment.

If (i) any claim is made against the Contractor by the State of New York or the City of New York for sales or compensating use taxes on such rental of construction equipment or (ii) any claim is made against the Contractor by a materialman, lessor or a subcontractor on account of a claim against such materialman, lessor or subcontractor by the State of New York or the City of New York for sales or compensating use taxes on rental of said equipment, then the Authority will reimburse the Contractor in an amount equal to the amount of such tax required to be paid in accordance with the requirements of law, provided that the provisos listed above in this numbered clause as A.1 through A.3 and B.1 through B.5 are complied with.

If the Authority elects to contest any such claim, it will bear the expense of such contest.

C. Materials Not Incorporated in Permanent Construction

The purchase by the Contractor or a subcontractor of *materials not incorporated in the Permanent Construction, but used or consumed in the performance of the Contract, including but not limited to, tangible personal property for use in (i) maintaining, installing, repairing or servicing tangible personal property or (ii) the Permanent Construction, excluding tools and equipment, and construction supplies or otherwise taxable services used or consumed by the Contractor or subcontractors at the construction site, excluding tools and equipment*, will also not be subject to New York State or New York City sales or compensating use taxes provided that:

1. the Contractor's and any subcontractor's *purchase of materials* is based upon the agency arrangement provided for in the clause hereof entitled "Agency for Rental of Construction Equipment And Purchase of Materials Not Incorporated in Permanent Construction" and the Contractor and subcontractors have performed all their obligations under said clause;
2. delivery of said *materials* is to the construction site;
3. the Contractor or subcontractor has furnished to the *vendor* the statement or other documentation from the Authority identifying this Contract as the one under which the Contractor or subcontractor has been authorized to *purchase said materials* and identifying the construction site to which delivery must be made;
4. the invoice for said *materials* is made out to the Authority and prescribes the place of delivery; and

5. the amounts payable for said purchase of *materials* do not exceed the amount of compensation payable in connection with the Work.

In view of the above, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such *purchases of materials*. If (i) any claim is made against the Contractor by the State or City of New York for sales or compensating use taxes on such *purchases of materials* or (ii) any claim is made against the Contractor by a materialman, or a subcontractor on account of a claim against such materialman, or subcontractor by the State or City of New York for sales or compensating use taxes on *purchases of said materials*, then the Authority will reimburse the Contractor in an amount equal to the amount of such tax required to be paid in accordance with the requirements of law, provided that the provisions listed above in this numbered clause as A.1 through A.3 and C.1 through C.5 are complied with.

If the Authority elects to contest any such claim, it will bear the expense of such contest.

## 20A. PERFORMANCE AND PAYMENT BOND

At the time of accepting a Contractor's Proposal, Construction Manager shall notify Contractor if payment and performance bonds will be required. If bonds are so required, Contractor shall furnish any required bond for the faithful performance of all obligations imposed upon Contractor by the Contract and also for the payment of all lawful claims of Subcontractors, Materialmen, and workers arising out of the performance of the Contract. Such bond shall be in the form bound herewith entitled, "Performance and Payment Bond", shall be in a penal sum equal to the Lump Sum and such bond shall be signed by one or more sureties<sup>4</sup> satisfactory to the Construction Manager, and shall include both Construction Manager and 1 WTC as dual Obligees. The bond may be executed on a separate copy of such form not physically attached to this Contract booklet. In any case, both the form of bond bound herewith and any unattached executed copy thereof shall form a part of this Form of Contract as though herein set forth in full.

If the Construction Manager elects to require the Contractor to furnish a bond, he shall deliver such bond to the Construction Manager within seven days after receipt by him of the acceptance of his Proposal, and the sureties thereon shall be as proposed by him, provided, that if the Construction Manager has theretofore given notice to him that his proposed sureties or any of them are not satisfactory, the bond shall be executed by other sureties satisfactory to the Construction Manager.

The Construction Manager shall give notice to the Contractor within ten (10) days after receipt of the Performance and Payment Bond as to whether or not such bond is satisfactory.

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<sup>4</sup> Sureties must be corporations (commonly known as "surety companies"), authorized to do business as sureties in the state(s) in which the construction site is located, whose names appear on the current list of the Treasury Department of the United States in effect at the time of submission of the Performance and Payment Bond to the Construction Manager as acceptable as sureties to the Treasury Department. In addition, the aggregate underwriting limitations on any one risk as set forth in the aforementioned list of the Treasury Department of the sureties shall equal or exceed the penal sum of the Performance and Payment Bond.

In the event of a default by the Contractor in its obligation to furnish a satisfactory bond within seven (7) days after he received an acceptance of his Proposal, such default shall entitle the Construction Manager in its discretion to terminate this Contract at any time within forty-five (45) days after the acceptance of the Proposal, without any liability on the part of the Construction Manager or 1 WTC. Inasmuch as the damages to the Construction Manager resulting from a termination by it upon the failure of the Contractor to furnish a satisfactory bond will include items whose accurate amount will be difficult or impossible to compute, such damages shall be liquidated in the sum of the following amounts:

A. The excess, if any, of the Lump Sum in the Proposal finally accepted over that in the Proposal of the Contractor; and

B. The expense of such new solicitation of the Contract and related costs, e.g. costs of printing, if any, as may be deemed necessary by the Construction Manager; and

C. The sum of Five Thousand Dollars (\$5000) for each day after the receipt by the Contractor of the acceptance of his Proposal that the performance of the Contract is not commenced by reason of the failure of the Contractor to furnish the required bond.

If the Contractor furnishes a bond in accordance with the requirements of the Construction Manager under this numbered clause, the Construction Manager shall reimburse the Contractor for the net amount actually paid by him to the surety or sureties as the premium on such bond. The Contractor shall deliver to the Construction Manager receipts from the surety or sureties evidencing such payment and the amount thereof. Within fifteen days after receipt of such evidence satisfactory to the Construction Manager, the Construction Manager shall pay to the Contractor by check the amount provided in this numbered clause.

If at any time the Construction Manager shall be or become dissatisfied with any surety or sureties, then, upon any bond furnished in accordance with the requirements of the Construction Manager, or if for any other reason such bond shall cease to be adequate security, the Contractor shall, within five (5) days after notice from the Construction Manager so to do, substitute a new bond in such form and sum and signed by such other sureties as may be necessary in the opinion of the Construction Manager to constitute adequate security.

## **CHAPTER II ADJUSTMENTS AND PAYMENTS**

### **21. ADJUSTMENTS OF LUMP SUM**

If any Work required by the Contract Drawings in their present form shall be countermanded or reduced, the Construction Manager shall have full authority on behalf of both parties to make such adjustment by way of reduction in the Lump Sum as he may in his sole discretion deem equitable and reasonable, and in making such adjustment, no allowance to the Contractor shall be made for anticipated profits.

The Construction Manager shall have authority to agree in writing with the Contractor for adjustments by way of reduction in the Lump Sum in lieu of those for which provision is heretofore made in this numbered clause.

### **22. COMPENSATION FOR EXTRA WORK**

Contractor shall not perform or receive compensation for Extra Work without prior written authorization to perform such Extra Work from Construction Manager. The Construction Manager shall have authority to agree in writing with the Contractor upon lump sum, in accordance with Rider C (Alternatives and Unit Prices) or such other compensation for Extra Work in lieu of the compensation for which provision is hereinafter made in this numbered clause.

If such agreement on compensation is not made, and Extra Work be performed, the Contractor's compensation shall be increased by the following amounts and such amounts only:

In the case of Extra Work performed by the Contractor personally, or by a Subcontractor of any tier or a Materialman, an amount equal to the actual net cost in money of the labor and materials required for such Extra Work, plus fifteen percent of such net cost in the aggregate for such Extra Work, plus such rental for equipment (other than small tools) required for such Extra Work as the Construction Manager deems reasonable plus the net increase in premiums for Commercial General Liability Insurance and Comprehensive Automobile Liability Insurance charged on the basis of the compensation for labor and materials for such Extra Work.

As used in this numbered clause (and in this clause only):

"Labor" means foremen, surveyors, laborers, mechanics and other employees below the rank of superintendent, exclusive of timekeepers, directly employed at the construction site, whether employed by the Contractor or by the Subcontractors, subject to the Construction Manager's authority to determine what employees of any category are "required for Extra Work" and as to the portion of their time allotted to Extra Work; and "cost of labor" means the wages actually paid to and received by such employees plus a proper proportion of (a) premiums, if any, actually paid by the employer for Workers' Compensation Insurance upon the basis of such wages, (b) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages, and (c) taxes actually paid by the employer pursuant to law upon the basis of such wages. "Employees" as used above means only the employees of one employer.

"Materials" means temporary and consumable materials as well as permanent materials; and "cost of materials" means the price (including taxes actually paid by the Contractor pursuant to law upon the basis of such materials) for which such materials are sold for cash by the manufacturers or producers thereof, or by regular dealers therein, whether or not such materials are purchased directly from the manufacturer, producer or dealer (or if the Contractor is the manufacturer or producer thereof, the reasonable cost to the Contractor of the manufacture and production), plus the reasonable cost of delivering such materials to

the construction site in the event that the price paid to the manufacturer, producer or dealer does not include delivery and in case of temporary materials, less their salvage value, if any.

"Work day" in reference to an item of equipment means a day other than a Saturday, Sunday or legal holiday except that if the particular item of equipment is actually utilized at the construction site by the Contractor or Subcontractors under this Contract or any other contract with the Construction Manager, 1 WTC or the Authority on a Saturday, Sunday or legal holiday said day shall be deemed a work day. The rental for equipment, whether owned by the Contractor or Subcontractors or rented from others and notwithstanding the actual price of any rental or actual costs associated with such equipment, shall be computed by the Construction Manager on the basis of the following:

A.

- 1.) Hourly rental for those items of equipment listed in the "Rental Rate Blue Book" (published by Machinery Information Division, K-III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, California 95131-2398), (hereinafter called "the Blue Book") shall be 100% of the applicable rates as listed in said book, reduced to an hourly basis (see formula below) except that such applicable rates shall be reduced by 50% for all hours of rental payable hereunder in excess of 8 hours each day. The edition of this publication to be used shall be the one in effect on the date of the actual rental of the equipment. The "Estimated Operating Cost per Hour" as set forth for such item of equipment in the Blue Book shall be added to the hourly rental for each hour that such equipment is actually engaged in performing Extra Work. No amount for operating cost will be allowed during periods when such equipment is not actually engaged in performing Extra Work (i.e. standby rental time). None of the provisions of the Blue Book shall be deemed referred to or included in this Contract except as specifically set forth in this Section.
- 2.) If no listing of rental rate and/or hourly operating cost for the item of equipment is in the Blue Book, the Construction Manager shall determine the reasonable rate of rental and/or hourly operating cost of the particular item of equipment by such other means as he finds appropriate.

B. When utilizing the rental rates appearing in the Blue Book, the Construction Manager shall determine the applicable rate and the hourly rental determined therefrom by applying the following criteria:

- 1.) The rate to be applied for an item of equipment used on a particular Extra Work order shall be the daily, weekly or monthly rates from the foregoing publication based on the total number of work days or portions thereof that a particular item of equipment or substitute item of equipment is at the construction site for use by the Contractor or Subcontractors whether under this Contract or any other contract with the Authority. Included within this period will be (i) work days of idleness of the equipment at the construction site whether such idleness results from acts or omissions of the Contractor, Construction Manager, 1 WTC consultants or third persons, breakdowns in the equipment or any other cause, (ii) work days on which the equipment is removed from the construction site solely to enable the performance of repairs thereon, and (iii) work days intervening between the removal of equipment from the construction site for repairs and the delivery to the construction site of the same or substitute equipment. The number of work days in the period for each rate shall be as indicated below:

Three work days or less.	Daily Rate
More than three work days but not more than fifteen work days.	Weekly Rate
More than fifteen work days.	Monthly Rate

The pro rata portion which one hour bears to the applicable rate shall be determined in accordance with the following formula:

Hourly rate based on daily rental.	1/8 of daily rental from Blue Book
Hourly rate based on weekly rental.	1/40 of weekly rental from Blue Book
Hourly rate based on monthly rental.	1/176 of monthly rental from Blue Book

- 2.) The rental rate shall be multiplied by the applicable regional adjustment factor shown for such item of equipment in the Blue Book. The adjustment factor shall not apply to the hourly operating cost.
  - 3.) If the Construction Manager should determine that the nature or size of the equipment used by the Contractor in connection with Extra Work is larger or more elaborate, as the case may be, than the size or nature of the minimum equipment determined by the Construction Manager to be suitable for the Extra Work, the reasonable rental will not be based upon the equipment used by the Contractor but will be based on the smallest or least elaborate equipment determined by the Construction Manager to have been suitable for the performance of the Extra Work.
- C. In the case of equipment utilized only for Extra Work: (a) in addition to amounts determined as provided in subparagraphs A and B above, there will be added to the rental as computed above the reasonable cost of transporting such equipment to and from the construction site, and (b) notwithstanding the number of hours during which such equipment is utilized, the minimum rental therefor will be for a period of eight hours.

In computing the Contractor's compensation insofar as it is based upon Extra Work, and notwithstanding any provision to the contrary appearing in the Blue Book, no consideration shall be given to any items of cost or expense not expressly set forth above, it being expressly agreed that the costs and percentage additions hereinbefore provided cover items of cost and expense to the Contractor of any type whatsoever, including administration, overhead, taxes (other than those enumerated above), clean-up, consumables including gas and oil, drafting (including printing or other reproduction), coordination, field measurements, maintenance, repairs, insurance, profit to the Contractor and small tools.

Whenever any Extra Work is performed (whether by the Contractor directly or through a Subcontractor), the Contractor shall, at the end of each day, submit to the Construction Manager (a) daily time slips showing the name and number of each workman employed on such Work, the number of hours which he is employed thereon, the character of his duties, and the wages to be paid to him, (b) a memorandum showing the rates and amounts of Workers' Compensation Insurance premiums, if any, and state and federal taxes based on such wages, and vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages (c) a memorandum showing the amount and character of the materials furnished for such Work, from whom they were purchased and the amount to be paid therefor, and (d) a memorandum of equipment used in the performance of such Work, together with the rental claimed therefor. Such memoranda and time slips are



for the purpose of enabling the Construction Manager to determine the amounts to be paid by the Construction Manager under this numbered clause; and accordingly, they shall constitute a condition precedent to such payment and the failure of the Contractor to furnish them with respect to any Work shall constitute a conclusive and binding determination on his part that such Work is not Extra Work and shall constitute a waiver by the Contractor of claims for payment for such Work. In the event that the Construction Manager and the Contractor shall agree in writing upon a lump sum or other compensation for Extra Work in lieu of compensation as provided in the second paragraph of this clause, the daily time slips and memoranda required by this paragraph shall not be required subsequent to the date on which such agreement has been reached.

### **23. COMPENSATION FOR EMERGENCY DELAYS**

If the Contractor is specifically directed by the Construction Manager to suspend his operations as stipulated in the Specifications entitled "Conditions and Precautions" or if the Contractor is specifically directed not to start his operations at a time when operations are permitted to start as stipulated in such Section, and if solely because of such suspension or direction not to start any of the Contractor's or Subcontractor's employees or equipment then engaged in or about to start such Work are necessarily kept idle at the construction site, during the hours when they would otherwise be engaged in the performance of the Work, then the Contractor's compensation shall be increased by an amount equal to the salaries and wages in amounts approved by the Construction Manager which the employer is required to pay and actually pays to such employees for the period or periods of such idleness, plus a proper proportion of (a) taxes actually paid by the employer pursuant to law upon the basis of such salaries and wages, and (b) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligations upon the basis of such salaries and wages, and in addition thereto such rental as the Construction Manager deems reasonable for such equipment during the period or periods of such idleness. The rental for idle equipment shall be computed by the Construction Manager in accordance with the provisions of the clause of the Form of Contract entitled "Idle Salaried Men and Equipment".

In the event that the Contractor deems that any payment should be made pursuant to this numbered clause, he shall give prompt written notice to the Construction Manager stating the reasons why he believes such payments should be made and shall moreover, furnish to the Construction Manager at the end of each day, a memorandum showing the name, payroll title, salary rate and employer of each of the workingmen, and description, owner and claimed rental rate for each item of equipment claimed to have been kept idle. Said notice and memorandum are for the purpose of enabling the Construction Manager to verify the Contractor's claim at the time. Accordingly, notwithstanding any other provisions hereof, the failure of the Contractor to furnish such notice and memorandum shall constitute a conclusive binding determination on his part that he is not entitled to compensation as provided herein and shall constitute a waiver by the Contractor of all claims for such payment, such notice and memorandum being conditions precedent to payment under this numbered clause.

### **24. PROGRESS PAYMENTS**

Payment Applications shall be on the form and provide all information and documentation as required in Rider L (Payment Procedures), including without limitation all necessary certifications required herein for Prevailing Rate of Wage paid by Contractor and its Subcontractors.

Using the Schedule of Values as a line-item accounting format, Payment Applications shall identify in detail the percent of Work completed less retention withheld.

The percentage completion shall be the percentage of that portion of the Work that has actually been completed, as approved by Construction Manager and 1 WTC.

Construction Manager shall retain five percent (5%) retention from all Payment Applications. In the event that Add Alternate #5 in Rider C (Alternates and Unit Prices), pertaining to the Concrete work in the Tower, is exercised, the five percent (5%) retention for this Lump Sum Contract (Concrete - Below Grade) shall be bifurcated and processed independently of Alternate #5, and shall be released exclusive of the costs for the pads and curbs work at the Plaza Level.

Each Payment Application period shall consist of two (2) payment applications per month. The date that the pencil draft of the first Payment Application in a calendar month to be submitted to Construction Manager and 1 WTC shall be determined by 1 WTC. On the 20th of each month, Contractor shall submit to Construction Manager and 1 WTC a pencil draft of the second Payment Application for the current month. Contractor, Construction Manager, Design Team representatives and 1 WTC shall meet on or before the 25th to discuss the draft. By the 1st (3<sup>rd</sup> for February Payment Application) of the following month, Contractor shall submit the official Payment Application in accordance with the approved pencil draft, along with all required information and documentation as set forth in Rider L (Payment Procedures). Construction Manager shall have ten (10) days thereafter to review and approve all or a portion of the Payment Application that shall be based upon the information in the approved pencil draft and associated required documentation, inform Contractor of missing required documentation or information, and issue the Certificate for Payment for the approved portion of the Payment Application. Construction Manager shall provide an integrated monthly progress payment request to 1 WTC for all contractors on the Project simultaneously. The approved portion of the Payment Application, subject to Construction Manager supplying all required documentation, shall be paid by 1 WTC to Construction Manager. Construction Manager shall pay Contractor no later than three (3) business days, or later if directed by 1 WTC, after receipt of such payment.

Contractor will be permitted to include "Mobilization" as a line item in the Schedule Of Values (as set forth in Rider L), in the amount of 3.5% of the Lump Sum (value equals \$4,025,000), exclusive of retainage. This 3.5% "Mobilization" cost will be credited from each Payment Application accordingly at a 3.5% value for the Lump Sum Contract work.

Notwithstanding the above, 1 WTC and Construction Manager reserve the right, in their sole discretion, to directly pay Subcontractors and Materialmen.

## **25. FINAL PAYMENT**

After the rendition of the Certificate of Final Completion and upon receipt from the Contractor of such information as may be required, the Construction Manager shall certify in writing to 1 WTC and to the Contractor the total compensation earned by the Contractor.

If so required, the Contractor shall thereupon (i) certify to the Construction Manager in writing, in such form as may be required pursuant to the clause hereunder entitled "Prevailing Rate of Wage", that Contractor has paid and caused its Subcontractors of any tier to pay at least the prevailing rate of wage and supplements required by such clause and (ii) furnish to the Construction Manager a detailed sworn statement of all claims, just and unjust, of Subcontractors, Materialmen and other third persons then outstanding and which Contractor has reason to believe may thereafter be made on account of the Work. (iii) furnish to the Construction Manager evidence of payment of all union fringe and employee benefit obligations; and (iv) furnish to the Construction Manager Final Waivers of Lien and Release from all Subcontractors and Materialmen of any tier.

Within fifteen (15) days after issuance of such certificate of total compensation earned (or within thirty days after receipt of the documents provided for in the immediately preceding paragraph, if required), the Construction Manager shall submit all required payment documents to 1 WTC. 1 WTC shall pay to Construction Manager and Construction Manager shall pay to Contractor within three (3) business days, or later if directed by 1 WTC, after the receipt from 1 WTC, by check the amount stated in said certificate, less all other payments and advances whatsoever to or for the account of the Contractor. All prior estimates and payments shall be subject to correction in this payment, which is throughout this Contract called the Final Payment.

The acceptance by the Contractor, or by anyone claiming by or through him, of Final Payment shall be and shall operate as a release to the 1 WTC Indemnatee Group of all claims and of all liability to the Contractor for all things done or furnished in connection with the Contract and for every act and neglect of the Construction Manager or 1 WTC and others relating to or arising out of the Contract, including claims arising out of breach of contract and claims based on claims of third persons, excepting only his claims for reimbursement for certain sales taxes as hereinbefore provided. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations in connection with this Contract or the Performance and Payment Bond.

The Contractor's agreement as provided in the immediately preceding paragraph above shall be deemed to be based upon the consideration forming part of this Contract as a whole and not to be gratuitous; but in any event even if deemed gratuitous and without consideration, such agreement as provided in the immediately preceding paragraph above shall nevertheless be effective. Such release shall include all claims, whether or not in litigation and even though still under consideration by the Construction Manager or the Engineer. Such release shall be effective notwithstanding any purported reservation of right by the Contractor to preserve such claim. The acceptance of any check designated as "Final Payment" or bearing any similar designation shall be conclusively presumed to demonstrate the intent of the Contractor that such payment was intended to be accepted as final, with the consequences provided in this numbered clause, notwithstanding any purported reservation of rights.

The Contractor agrees that he shall not be entitled to, and hereby waives any right he might otherwise have to, and shall not seek any judgment whether under this Contract or otherwise for any such Final Payment or for an amount equivalent thereto or based thereon, or for any part thereof, if such judgment would have the effect of varying, setting aside, disregarding or making inapplicable the terms of this numbered clause or have the effect in any way of entitling the Contractor to accept such Final Payment or an amount equivalent thereto or based thereon or any part thereof other than in the same fashion as a voluntary acceptance of a Final Payment subject to all the terms of this Contract including this numbered clause, unless and until the Contractor should obtain a judgment on any claim arising out of or in connection with this Contract (including a claim based on breach of contract) for an amount not included in said Final Payment. In any case in which interest is allowable on the amount of the Final Payment, such interest shall be at the rate of six percent (6%) per annum for the period, if any, in which such interest is due.

## **26. WITHHOLDING OF PAYMENTS**

(1) If the Contractor fails to perform any of its obligations under this Contract or under any other agreement between the Contractor and 1 WTC (including Contractor's obligation to pay in accordance with the terms of any such contract or agreement any claim lawfully made against Contractor by any Materialman, Subcontractor of any tier, worker, or other person or entity, which claim arises out of or in connection with the performance of this Contract or any other agreement as so described, or (2) if any claim (just or unjust) which arises out of or in connection with this Contract, or any other agreement between the Contractor and 1 WTC, is made against the Authority, or 1 WTC or (3) if any Subcontractor with respect to this Contract, or with respect to any other agreement between the Contractor and 1 WTC,

fails to pay any claim lawfully made against such Subcontractor by any Materialman, Subcontractor, worker, or other third person that arises out of or in connection with this Contract or any other agreement so described, or if in the opinion of the Chief Engineer, any of the aforesaid contingencies is likely to arise, then the Construction Manager shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payment has already been certified as due) such sums as the Chief Engineer may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Chief Engineer may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Construction Manager to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Construction Manager does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Construction Manager to withhold and apply moneys nor any exercise or attempted exercise of, or omission to exercise, such rights by the Construction Manager shall create any obligation of any kind to such Materialmen, Subcontractors, workmen or other third persons.

Until actual payment to the Contractor, his right to any amount to be paid under this Contract (even though such amount has already been certified as due) shall be subordinate to the rights of the Construction Manager or 1 WTC under this numbered clause.

In the event that wages and/or supplements have been paid in an amount less than as required by this Contract, then the Construction Manager, 1 WTC or Authority shall also have the right to withhold from the Contractor out of any payment, final or otherwise, on this, or any other open contract that the Contractor has with 1 WTC or Authority, so much as may be necessary to pay to union fringe benefit funds, laborers, mechanics, architects, draftsmen, engineers and technical workers, and others employed on the Work, the difference between the sums such persons should have received as wages and/or supplements and the amounts they actually received, and to pay such sums over to such persons. All such payments shall be deemed to be payments for the Contractor's account. In addition, the Contractor shall be required to pay to 1 WTC or Authority an amount equal to the Construction Manager's, 1 WTC's or Authority's cost of any investigation conducted by or on behalf of the 1 WTC or Authority, that discovers a failure to pay wages and/or supplements as required by this Contract by the Contractor or its Subcontractors, the cost of such investigation to be determined by the Chief Engineer personally. If the Contractor fails or refuses to pay for the cost of any such investigation after demand by the Construction Manager, 1 WTC or Authority, the Construction Manager may deduct from any amount payable to the Contractor by the Construction Manager, under the Contract or under any other open contract between the Contractor and 1 WTC or Authority, an amount equal to the cost of such investigation.

If, however, the payment of any amount due to the Contractor shall be improperly delayed by the fault of 1 WTC or the Construction Manager, then the Construction Manager shall pay the Contractor interest thereon at the rate of six percent (6%) per annum for the period of delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.

### **CHAPTER III**

#### **PROVISIONS RELATING TO TIME**

##### **27. TIME FOR COMPLETION AND DAMAGES FOR DELAY**

The Contractor shall complete the performance of all Work under this Contract by the date or number of calendar days after acceptance of Proposal, as listed in Rider T (Milestone Dates and Liquidated Damages).

The Contractor shall not commence the performance of the Work until the later of the following dates:

- A. If a Performance and Payment Bond is required, the date of receipt by it of notice from 1 WTC that the Performance and Payment Bond furnished by it is satisfactory;
- B. If Chapter V of the "Form of Contract" contains a clause entitled "Insurance Procured by Contractor", the date of receipt by it of notice from 1 WTC that the insurance procured by it pursuant to said clause is satisfactory, as evidenced by the certificate to be furnished in accordance with said clause.

The time for completion shall not be extended on account of the time required to furnish the documents referred to in subparagraphs A and B above, but 1 WTC shall give notice to the Contractor within ten days after receipt of the Performance and Payment Bond or certificate of insurance as to whether or not such bond or insurance is satisfactory.

The Contractor's obligations for the performance and completion of the Work within the time or times provided for in this Contract are of the essence of this Contract. The Contractor guarantees that it can and will complete the performance of the Work within the time hereinbefore stipulated or within the time as extended in accordance with the clause hereof entitled "Extensions of Time". Inasmuch as the damage and loss to 1 WTC which will result from delay in completing the performance of the Work within the time herein stipulated will include items of loss whose amount will be incapable or very difficult of accurate estimation, the parties agree that the damages to 1 WTC for each calendar day by which the Contractor does not complete performance of the Work within the time or times above stipulated or within such time or times as extended in accordance with the clause hereof entitled "Extensions of Time" shall be liquidated in the sum as set forth in Rider T (Milestone Dates and Liquidated Damages) for every calendar day of delay.

##### **EXTENSIONS OF TIME**

**TIME IS OF THE ESSENCE IN REGARDS TO CONTRACTOR'S OBLIGATIONS PURSUANT TO THIS CONTRACT**, including without limitation Contractor's obligation to complete its Work in by the date or number of calendar days after acceptance of Proposal, as listed in Rider T (Milestone Dates and Liquidated Damages).

The time above provided for completion of any part of the Contract shall be extended (subject, however, to the provisions of this numbered clause) only if in the opinion of the Construction Manager, the Contractor is necessarily delayed in completing such part by such time solely and directly by a cause which meets the conditions set forth in A and B below:

- A. Such cause is beyond the Contractor's control and arises without his fault;

- B. Such cause comes into existence after the opening of Proposals on this Contract and neither was nor could have been anticipated by investigation before such opening.

Variations in temperature and precipitation shall be conclusively deemed to have been anticipated before opening of such Proposals on this Contract except to the extent that the actual monthly average temperature varies from a temperature which is ten percent (10%) above or below the monthly normal temperature and except to the extent that the actual number of days of precipitation (of 0.1 inch or more) per month exceeds a number equal to two plus the normal number of days of precipitation per month.

In any case, the variations in temperature and precipitation described in the immediately preceding sentence will be cause for an extension of time only if occurring between the actual time of commencement of the Work at the construction site and the time for completion stipulated in the clause hereof entitled "Time for Completion and Damages for Delay" (or such time as extended as provided for herein). In the case of portions of months the number of days will be pro-rated by the Construction Manager. Temperature and precipitation shall be as recorded by the U. S. Weather Bureau in its publications, including that entitled "Local Climatological Data with Comparative Data", which is applicable to the area in which the Work is to be performed, and in the case of precipitation, the normal number of days of precipitation (of 0.1 inch or more) per month as abstracted from the aforementioned publications are as follows:

Month	Normal number of days per month on which precipitation exceeds 0.1 inch
January	7
February	7
March	8
April	7
May	6
June	6
July	5
August	7
September	6
October	6
November	7
December	7

In any event, even though a cause of delay meets the above conditions, in the opinion of the Construction Manager, an extension shall be granted only to the extent that (i) the performance of the Work is actually and necessarily delayed and (ii) the effect of such cause cannot be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts and measures (including planning, scheduling and rescheduling), whether before or after the occurrence of the cause of delay, and an extension shall not be granted for a cause of delay which would not have affected the performance of the Contract were it not for the fault of the Contractor or for other delay for which the Contractor is not entitled to an extension of time.

Any reference herein to the Contractor shall be deemed to include Subcontractors and Materialmen, whether or not in privity of contract with the Contractor, and employees and others performing any part of the Contract and all the foregoing shall be considered as agents of the Contractor.

The period of any extension of time shall be that necessary to make up the time actually lost, subject to the provisions of this numbered clause, and shall be only for the portion of the Contract actually delayed.

As a condition precedent to an extension of time, the Contractor shall give written notice to the Construction Manager within forty-eight (48) hours after the time when he knows or should have known of any cause which might under any circumstances result in delay for which he claims or may claim an extension of time (including those causes which the Construction Manager is responsible for or has knowledge of), specifically stating that an extension is or may be claimed, identifying such cause and describing, as fully as practicable at the time, the nature and expected duration of the delay and its effect on the various portions of the Contract. Since the possible necessity for an extension of time may materially alter the scheduling, plans and other actions of the Construction Manager, and since, with sufficient opportunity, the Construction Manager might if it so elects attempt to mitigate the effect of a delay for which an extension of time might be claimed, and since merely oral notice may cause disputes as to the existence or substance thereof, **the giving of written notice as above required shall be of the essence of the Contractor's obligations** and failure of the Contractor to give written notice as above required shall be a conclusive waiver of an extension of time.

It shall in all cases be presumed that no extension, or further extension, of time is due unless the Contractor shall affirmatively demonstrate to the satisfaction of the Construction Manager that it is. To this end the Contractor shall maintain adequate records supporting any claim for an extension of time, and in the absence of such records, the foregoing presumption shall be deemed conclusive

## **28. IDLE SALARIED WORKERS AND EQUIPMENT**

If any salaried workers or equipment of the Contractor or any Subcontractor are necessarily kept continuously idle and wholly unoccupied at the construction site for a full day on each of two or more full days on which they would be engaged in the performance of the Work but for causes due solely to acts or omissions of Construction Manager and 1 WTC occurring after the opening of Proposals on this Contract, and if such idleness is not due to any cause within the control of the Contractor or of any of his Subcontractors or Materialmen or its or their employees, then the Construction Manager shall pay to the Contractor and the Contractor shall accept (in addition to any sums otherwise payable under this Contract, and in full satisfaction of and in liquidation of all claims for damages because of such act or omission of the Construction Manager or 1 WTC) an amount equal to that which the employer actually pays such salaried employees during such full days of idleness, plus a proper proportion of vacation allowances and union dues and assessments actually paid by the employer pursuant to contractual obligations on the basis of such salaries, and a proper proportion of the taxes actually paid by the employer pursuant to law upon the basis of such salaries and plus such rental for such idle equipment as the Construction Manager deems reasonable. The rental for idle equipment shall be computed by the Construction Manager in accordance with the provisions of the clause of the Form of Contract entitled "Compensation for Extra Work"; provided, however, that the provisions of subparagraph C of said clause shall not be applicable to such idle equipment.

The Contractor shall give written notice to the Construction Manager before the end of the second of the above mentioned two (2) or more full days (whether or not the Construction Manager is aware of the existence of any circumstances which might constitute a basis for payment under this numbered clause), specifically stating that salaried men or equipment have been kept idle under circumstances which might result in payment under this numbered clause; and he shall furnish with such notice, for all the days that have occurred, and shall in addition furnish at the end of each additional day of the above mentioned two (2) or more full days, (a) a memorandum showing the name, payroll title, salary rate and employer of each of the salaried men claimed to have been kept idle at the construction site, and taxes based upon their salaries and the holiday and vacation allowances and union dues and assessments which the employer must actually pay pursuant to contractual obligations based on their salaries, and (b) a memorandum of the equipment claimed to be kept idle, together with the amount claimed as rental therefor. Said notice and memoranda are for the purpose of enabling the Construction Manager to verify the Contractor's claim at the time, and of enabling him to take such steps as may be necessary to remedy the conditions upon which the claim is based. The furnishing of such notice and memoranda shall be a condition precedent to payment under this numbered clause, so that the day on which notice is given shall be counted as not later than the second of the above mentioned two (2) or more full days and no subsequent day shall be counted for which the above memoranda are not furnished at the end of such day.

## **29. DELAYS TO CONTRACTOR**

As between the Contractor and the Construction Manager, the Contractor assumes the risk of all suspensions of or delays in performance of the Contract, regardless of the length thereof, arising from all causes whatsoever, whether or not relating to this Contract, including wrongful acts or omissions of any member of the 1 WTC Indemnitee Group, except only to the extent, if any, that compensation or an extension of time may be due as expressly provided for elsewhere in this Contract for such suspension or delays and except to the extent, if any, that compensation may be agreed to by the Construction Manager in writing pursuant to the clause hereof entitled "Compensation for Extra Work" for impact costs incurred by the Contractor in connection with the performance of Extra Work. Subject only to such exceptions, the Contractor shall bear the burden of all costs, expenses and liabilities which he may incur in connection with such suspensions or delays, and all such suspensions, delays, costs, expenses and liabilities of any nature whatsoever, whether or not provided for in this Contract, shall conclusively be deemed to have been within the contemplation of the parties.

Notwithstanding any provisions of this Contract, whether relating to time of performance or otherwise, the Construction Manager make no representation or guaranty as to when the construction site or any part thereof will be available for the performance of the Contract or as to whether conditions at the construction site will be such as to permit the Contract to be performed thereon without interruption or by any particular sequence or method or as to whether the performance of the Contract can be completed by the time required under this Contract or by any other time.

Wherever in connection with this Contract it is required, expressly or otherwise, that the Construction Manager shall perform any act relating to the Contract, including making available or furnishing any real property, materials, or other things, no guaranty is made by the Construction Manager as to the time of such performance and the delay of the Construction Manager in fulfilling such requirement shall not result in liability of any kind on the part of the 1 WTC Indemnitee Group except only to the extent, if any, that an extension of time or compensation may be due as expressly provided for elsewhere in this Contract.



**30. CANCELLATION FOR DELAY**

If the performance of the Contract or any portion of it shall, in the opinion of the Construction Manager, be materially delayed, whether or not through the fault of the Contractor, by any cause which affects the Contractor's ability to perform the Contract without affecting to the same degree the Construction Manager's own ability to perform it, either directly or through others, the Construction Manager shall have the right at any time during the existence of such delay to cancel this Contract as to any portion not yet performed, without prejudice to the rights, liabilities and obligations of the parties under this Contract arising out of portions already performed, provided, however, that such right of cancellation shall not exist if the delay be due to any wrongful act or omission of any member of the 1 WTC Indemnatee Group. In the event of such cancellation, no allowance shall be made for anticipated profits.

## **CHAPTER IV CONDUCT OF CONTRACT**

### **31. SUSPENSION, TERMINATION AND ALTERNATIVE DISPUTE RESOLUTION OF ALL DISPUTES**

If at any time it shall be, from the viewpoint of 1 WTC or Construction Manager, determined to be impracticable or undesirable to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of 1 WTC or Construction Manager, Construction Manager shall have authority to suspend performance of any part or all of the Contract until such time as Construction Manager may deem it practicable or desirable to proceed. Moreover, if at any time it shall be, from the viewpoint of 1 WTC or Construction Manager, determined to be impracticable or undesirable to proceed with or continue the performance of the Contract or any part thereof whether or not for reasons beyond the control of 1 WTC or Construction Manager, Construction Manager shall have authority to cancel this Contract as to any or all portions not yet performed and as to any materials not yet installed even though delivered. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed, but no allowance shall be made for anticipated profits. Contractor shall be entitled to compensation only for the portion for Work performed less any damages incurred by the 1 WTC Indemnitee Group or reasonably foreseeable to be incurred or resulting from any breach of Contract by Contractor.

To resolve all disputes and to prevent litigation the parties to this Contract authorize the Chief Engineer to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal and claims of a type which are barred by the provisions of this Contract) or the Project and his decision shall be conclusive, final and binding on the parties. His decision may be based on such assistance as he may find desirable. The effect of his decision shall not be impaired or waived by any negotiations or settlement offers in connection with the question decided, whether or not he participated therein himself, or by any prior decision of the Engineer or others, which prior decisions shall be deemed subject to review by the Chief Engineer, or by any termination or cancellation of this Contract.

All such questions shall be submitted in writing by either party to the Chief Engineer for his decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. In any action against the Construction Manager or 1 WTC relating to any such question the Contractor must allege in his complaint and prove such submission, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to the Chief Engineer.

This numbered clause shall be governed by and construed in accordance with the law of the State of New York, without giving effect to its choice of law provisions.

### **32. AUTHORITY AND DUTIES OF CONSTRUCTION MANAGER**

Inasmuch as the public interest requires that the Project to which this Contract relates shall be performed in the manner which 1 WTC and Construction Manager deems best, the Construction Manager, subject to 1 WTC's opinion, shall have absolute authority to determine what is or is not necessary or proper for or incidental to the portion thereof specified in the clause hereof entitled "General Agreement" and the Contract Drawings shall be deemed merely his present determination on this point. In the exercise of this authority, Construction Manager shall have power to alter the Contract Drawings; to require the performance of Work not required by them in their present form, even though of a totally different

character from that now required; and to vary, increase and diminish the character, quantity and quality of, or to countermand, any Work now or hereafter required. Such variation, increase, diminution or countermanding need not be based on necessity but may be based on convenience.

In the performance of the Contract, the Contractor shall conform to all orders, directions and requirements of the Construction Manager and shall perform the Contract to the satisfaction of the Construction Manager at such times and places, by such methods and in such manner and sequence as he may require, and the Contract shall at all stages be subject to his inspection. The Construction Manager shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Contract Drawings and any orders for Extra Work. The Contractor shall employ no equipment, materials, methods or men to which the Construction Manager objects, and shall remove no materials, equipment or other facilities from the construction site without permission. Upon request, the Construction Manager shall confirm in writing any oral order, direction, requirements or determination.

The Contractor is requested to orally advise the Construction Manager of questions as they arise. Although such advice will not substitute for the written notice and information for which requirements are set forth elsewhere herein, it is anticipated that it will facilitate prompt decisions on the part of the Construction Manager and others.

The enumeration herein or in the Specifications of particular instances in which the opinion, judgment, discretion or determination of the Construction Manager shall control or in which the Contract shall be performed to his satisfaction or subject to his inspection, shall not imply that only the matters of a nature similar to those enumerated shall be so governed and performed, but without exception the entire Contract shall be so governed and so performed.

### **33. NOTICE REQUIREMENTS**

No claim against the Construction Manager and 1 WTC shall be made or asserted in any action or proceeding at law or in equity, and the Contractor shall not be entitled to allowance of such claim, unless the Contractor shall have complied with all requirements relating to the giving of written notice of the information with respect to such claim as provided in this numbered clause. The failure of the Contractor to give such written notice and information as to any claim shall be conclusively deemed to be a waiver by the Contractor of such claim, such written notice and information being conditions precedent to such claim. As used herein "claim" shall include any claim arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal and claims of a type which are barred by the provisions of this Contract) for damages, payment or compensation of any nature or for extension of any time for performance of any part of this Contract.

The requirements as to the giving of written notice and information with respect to claims shall be as follows:

- A. In the case of any claims for Extra Work, extension of time for completion, idle salaried men and equipment, or any other matter for which requirements are set forth elsewhere in this Contract as to notice and information, such requirements shall apply.

- B. In the case of all other types of claim, notice shall have been given to the Construction Manager and 1 WTC, personally, as soon as practicable, and in any case, within forty-eight (48) hours, after occurrence of the act, omission, or other circumstance upon which the claim is or will be based, stating as fully as practicable at the time all information relating thereto. Such information shall be supplemented with any further information as soon as practicable after it becomes or should become known to the Contractor, including daily records showing all costs which the Contractor may be incurring or all other circumstances which will affect any claim to be made, which records shall be submitted to the Construction Manager and 1 WTC, personally.

The above requirements for notices and information are for the purpose of enabling the Construction Manager to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any order, change its plans, mitigate or remedy the effects of circumstances giving rise to a claim or take such other action as may seem desirable and to verify any claimed expense or circumstances as they occur, and the requirements herein for such notice and information are essential to this Contract and are in addition to any notice required by statute with respect to suits against the Construction Manager and 1 WTC.

The above referred to notices and information are required whether or not the Construction Manager or 1 WTC are aware of the existence of any circumstances which might constitute a basis for a claim and whether or not the Construction Manager or 1 WTC have indicated it will consider a claim.

No act, omission, or statement of any kind shall be regarded as a waiver of any of the provisions of this numbered clause or may be relied upon as such waiver except only either a written statement signed by the Construction Manager or 1 WTC expressly stating that a waiver is intended as to any particular provision of this numbered clause, and more particularly no discussion, negotiations, consideration, correspondence, or requests for information with respect to a claim by any officer, employee or agent of the Construction Manager or 1 WTC shall be construed as a waiver of any provision of this numbered clause or as authority or apparent authority to effect such a waiver.

Since merely oral notice or information may cause disputes as to the existence or substance thereof, and since notice, even if written, to other than the Construction Manager to receive it may not be sufficient to come to the attention of the representative of the Construction Manager with the knowledge and responsibility of dealing with the situation only notice and information complying with the express provisions of this numbered clause shall be deemed to fulfill the Contractor's obligation under this Contract.

All notice requirements for Construction Manager or 1 WTC shall be deemed to be made if sent to the following: (i) Milo Rivero or his successor in duty, Project Executive of 1 WTC, 115 Broadway 10th floor, New York, NY 10006; and (ii) Mike Mennella or his successor in duty, Executive Vice President, Tishman Construction Corporation, 666 Fifth Avenue, New York, NY 10103

#### **34. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, creed, sex, color or national origin. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

- B. The Contractor shall send to each labor union or representative of workers with which Contractor has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commission for Human Rights, advising such labor union or representative of the Contractor's agreement under clauses A through H (hereinafter called "non-discrimination clauses"). If the Contractor was directed to do so by the Authority as part of the bid or negotiation of this Contract, the Contractor shall request such labor union or representative to furnish him with a written statement that such labor union or representative will not discriminate because of race, creed, sex, color or national origin and that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Contract, shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the Contractor shall promptly notify the State Commission for Human Rights of such failure or refusal.
- C. The Contractor shall post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses A and B and such provisions of the State's laws against discrimination as the State Commission for Human Rights shall determine.
- D. The Contractor shall state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, sex, color or national origin.
- E. The Contractor shall comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, shall furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such sections of the Executive Law, and shall permit access to his books, records and accounts by the State Commission for Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
- F. This Contract may be forthwith canceled, terminated or suspended, in whole or in part, by the Construction Manager upon the basis of a finding made by the State Commission for Human Rights that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future contracts made by or on behalf of the State, 1 WTC, the Authority or other public authority or agency of the State, until he has satisfied the State Commission for Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commission, notice thereof has been given to the Contractor by the Commission and an opportunity has been afforded him to be heard publicly before the State Commissioner of Human

Rights or his designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

- G. The Contractor shall include the provisions of clauses A through F in every subcontract or purchase order in such a manner that such provisions will be binding upon each Subcontractor or vendor as to operations to be performed within the State of New York. The Contractor shall take such action in enforcing such provisions of such subcontract or purchase order as the Construction Manager may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a Subcontractor or vendor as a result of such direction by the Construction Manager, the Contractor shall promptly so notify the Construction Manager, requesting him to intervene and protect the interests of the Construction Manager.
- H. The provisions of this numbered clause which refer to the State Commission for Human Rights, the Attorney General and the Industrial Commissioner are inserted in this Contract for the benefit of such parties, as well as for the benefit of the Authority, and said Commission, Commissioner and the Attorney General shall have a direct right of action against the Contractor to effectuate the intent of this clause.

### **35. AFFIRMATIVE ACTION REQUIREMENTS – EQUAL EMPLOYMENT OPPORTUNITY**

The Contractor shall comply with the provisions set forth hereinafter. These provisions are modeled on the conditions for bidding on federal government contracts adopted by the Office of Federal Contract Compliance in 1978.

Each bidder, Contractor or Subcontractor (hereinafter called the Contractor) must fully comply with the clause entitled "Equal Employment Opportunity" and these bid conditions. The Contractor commits itself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of these bid conditions by submitting a properly signed bid.

The Contractor shall appoint a company executive to assume the responsibility for the implementation of the requirements, terms and conditions of these bid conditions.

- A. The goals for minority and female participation, expressed in percentage terms, for the Contractor's workforce at the construction site under this Contract are as follows:

Minority, except laborers	30%
Minority, laborers	40%
Female, except laborers	6.9%
Female, laborers	6.9%

These goals are applicable to all construction Work performed at the construction site under the Contract.

The Contractor's compliance with this Section shall be based on its implementation of the clause entitled "Equal Employment Opportunity," and specific affirmative action obligations required herein of minority and female employment and training must be substantially uniform throughout the length of the Contract and in each trade. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract. Compliance with the goals will be measured against the total work hours performed.

B.

- 1.) The Contractor shall provide written notification to the General Manager, Business and Job Opportunity, Office of Regional and Economic Development of the Port Authority of New York and New Jersey, within ten (10) working days of award of any construction subcontract in excess of Ten Thousand Dollars (\$10,000) at any tier for construction work under this Contract. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- 2.) The Contractor shall submit a Workforce Projection Schedule, which shall be correlated to the progress schedule, within thirty (30) days after acceptance of the proposal, for the approval of the Construction Manager. The Contractor shall maintain and periodically update it at intervals as required by the Construction Manager. The Workforce Projection Schedule shall include the time period in which each trade shall be utilized, the average number of workers required per trade on a weekly basis, the peak period for each trade, and the number of workers required per trade for the peak period on a weekly basis.

C.

- 1.) As used in these specifications:
  - a. Omitted
  - b. "Manager" means General Manager, Business and Job Opportunity, Office of Regional and Economic Development of the Authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) Native American or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2.) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each subcontract in excess of Ten Thousand Dollars (\$10,000) such provisions as are necessary for the Contractor to achieve the aggregate goals set forth above.

- 3.) Omitted.
- 4.) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p hereof. The goals set forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in the total workforce at the construction site under the Contract including employees of the Contractor and the Subcontractors. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified. These goals may be achieved through utilization of journeyworkers and apprentices. In the event they are not achieved through the utilization of journeyworkers, the maximum number of apprentices provided for in the applicable collective bargaining agreement may be utilized to achieve said goals.
- 5.) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations hereunder.
- 6.) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- 7.) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these provisions shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - b. Develop maximum job opportunities for apprentices appropriate to the conditions of the Work and subject to the applicable collective bargaining agreement, in conjunction with training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7a above.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.



- d. Provide immediate written notification to the Manager when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth.
- k. Tests and other selection requirements shall comply with 41 CFR Part 60-3.

- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations hereunder are being carried out.
  - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8.) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p hereof provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.
- 9.) Goals for minorities and for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation hereof if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is under-utilized).
- 10.) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 11.) The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

- 12.) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the clause entitled "Equal Employment Opportunity", including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by the Construction Manager. Any Contractor who fails to carry out such sanctions and penalties shall be in violation hereof.
- 13.) The Contractor, in fulfilling its obligations hereunder shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 hereof so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, the Construction Manager shall proceed accordingly.
- 14.) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports, including the Monthly Employment Utilization Report, relating to the provisions hereof as may be required and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- 15.) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

### **36. PREVAILING RATE OF WAGE**

The Contractor shall pay or provide (and shall cause all Subcontractors to pay or provide) to his or their workmen, laborers and mechanics (who are employed by him or them to work on an hourly or daily basis at any trade or occupation at or about the construction site) at least the prevailing rate of wage and supplements for others engaged in the same trade or occupation at the time and in the locality in which the Work is being performed as determined by the Construction Manager and notwithstanding that such rate may be higher than the rate in effect on the date of opening of Proposals.

For purposes of this Contract, the Construction Manager has determined that the prevailing rates of wage and supplements are those established by the Commissioner of Labor of the State of New York for the locality and for the period of time in which the Work is performed. The currently prevailing rates of wage and supplements are set forth in the Prevailing Rate Schedule annexed hereto and made a part hereof. These rates are subject to annual adjustment effective July 1st of each year and a Prevailing Rate Schedule reflecting all adjustments will be available for the Contractor's inspection on or about July 15th of each year on the 3rd Floor, 3 Gateway Center, Newark, New Jersey 07102 during regular business hours.

The provisions of this numbered clause are inserted in this Contract for the benefit of such workmen, laborers and mechanics as well as for the benefit of the Construction Manager; and if the Contractor or any Subcontractor shall pay or provide any such workman, laborer or mechanic less than the rates of wages and supplements above described, such workman, laborer or mechanic shall have a direct right of action against the Contractor or such Subcontractor for the difference between the wages and supplements actually paid or provided and those to which he is entitled under this clause. If such workman, laborer or mechanic is employed by any Subcontractor whose subcontract does not contain a provision substantially similar to the provisions of this clause (requiring the payment or provision of at least the above minimum, and providing for a cause of action in the event of the Subcontractor's failure to pay or provide such wages and supplements) such workman, laborer or mechanic shall have a direct right of action against the Contractor. Neither the Construction Manager nor 1 WTC shall be a necessary party to any action brought by any workman, laborer or mechanic to obtain a money judgment against the Contractor or any Subcontractor pursuant to this numbered clause.

Nothing herein contained shall be construed to prevent the Contractor or any Subcontractor from paying higher rates of wages or providing higher supplements than the minimum hereinbefore prescribed; and nothing herein contained shall be construed to constitute a representation or guarantee that the Contractor or any Subcontractor can obtain workmen, laborers and mechanics for the minimum herein before prescribed.

The Contractor shall post at the Work site, in a place that is prominent, accessible and visible to all employees of the Contractor and its Subcontractors during the daily time period that the Contractor and/or Subcontractor performs Work at the site, the appropriate prevailing wage and supplement schedules. The Contractor must inform all employees, including those of its Subcontractors, that they may obtain a copy of the prevailing wage and supplement schedule from the Contractor.

The Contractor and every Subcontractor shall make and maintain weekly payroll records during the course of the Work and for the period set forth in the clause hereof entitled "Construction Manager Access to Records" for all employees employed in the Work. Such records shall contain the name, address and social security number of each such employee, the employee's correct payroll classification, rate of pay and supplements, daily and weekly number of hours worked, deductions made and actual wages and supplements paid. The Contractor shall submit these weekly payroll records to the Construction Manager (on forms furnished by the Construction Manager) of all his payroll records and those of each of his Subcontractors as the Construction Manager may require with the Contractor's monthly Payment Application, together with an affidavit by the Contractor and by each Subcontractor to the effect that such payroll records are correct and complete, the wage and supplement rates contained therein are not less than those required by the provisions of this Contract, and the classifications set forth for each employee conform with the work performed. Such copies and summaries and the original payroll records shall be available for inspection by the Construction Manager (including its Inspector General), and the Contractor and its Subcontractors shall permit such representatives to interview employees during working hours on the job site.

The Construction Manager may at any time request the Contractor to prepare a daily report on the Construction Manager form entitled *Contractor Daily Sign-In Sheet*, copies of which can be obtained from the Construction Manager, The *Contractor Daily Sign-In Sheet* shall be completed as follows:

- 1.) At the beginning of each workday the Contractor shall:
  - a. fill in the top of the *Contractor Daily Sign-In Sheet*, including the location, date, contractor/Subcontractor name and contract number;
  - b. ensure that each employee, including those of Subcontractors, has printed and signed his or her name and indicated his or her work classifications, the last four digits of his or her social security number, and his or her starting time;

- 2.) At the end of each workday, the Contractor shall:
- a. ensure that each employee, including those of Subcontractors, has signed out and indicated his or her ending time;
  - b. sign the Certification Statement at the bottom of the form to indicate that the information contained in the *Contractor Daily Sign-In Sheet* is true and accurate; and
  - c. submit the original completed form to the Construction Manager.

In an area of his office at the site of the Work which is accessible to his employees, the Contractor shall display such printed material as may be provided by the Construction Manager setting forth information for the employees of the Contractor and his Subcontractors concerning the wage and supplemental benefit requirements set forth in this numbered clause. The Contractor shall also cause each of his Subcontractors to display such material in a similarly accessible place in any office which the Subcontractor maintains at the site of the Work.

The Contractor's failure to comply with any provision of this numbered clause shall be deemed a substantial breach of this Contract.

### **37. EXTRA WORK ORDERS**

No Extra Work of any amount shall be performed except pursuant to written orders of the Construction Manager expressly and unmistakably indicating his intention to treat the Work described therein as Extra Work.

In the absence of such an order signed by the Construction Manager, if the Construction Manager shall direct, order or require any Work, whether orally or in writing, which the Contractor deems to be Extra Work, the Contractor shall nevertheless comply therewith, but shall within twenty-four (24) hours give written notice thereof to the Construction Manager, stating why he deems it to be Extra Work, and shall moreover furnish to the Construction Manager time slips and memoranda as required by the clause hereof entitled "Compensation for Extra Work". Said notice, time slips and memoranda are for the purpose of affording to the Construction Manager an opportunity to verify the Contractor's claim at the time and (if he desires so to do) to cancel promptly such order, direction or requirement of the Construction Manager, of affording to the Construction Manager an opportunity of keeping an accurate record of the materials, labor and other items involved, and generally of affording to the Construction Manager an opportunity to take such action as it may deem desirable in light of the Contractor's claims. Accordingly, the failure of the Contractor to serve such notice or to furnish such time slips and memoranda shall be deemed to be a conclusive and binding determination on his part that the direction, order or requirement of the Construction Manager does not involve the performance of Extra Work, and shall be deemed to be a waiver by the Contractor of all claims for additional compensation or damages by reason thereof, such written notice, time slips and memoranda being a condition precedent to such claims.

### **38. PERFORMANCE OF EXTRA WORK**

The provisions of this Form of Contract relating generally to Work and its performance shall apply without exception to any Extra Work required and to the performance thereof. Moreover, the provisions of the Specifications relating generally to the Work and its performance shall also apply to any Extra Work required and to the performance thereof, except to the extent that a written order in connection with any particular item of Extra Work may expressly provide otherwise. Extra Work performed other than in accordance with Article 37 ("Extra Work Orders") shall be deemed performed at Contractor's own risk and expense and without any compensation.

### 39. TITLE TO MATERIALS

All materials to become part of the permanent construction and those other materials purchased under the clause of the Contract entitled, "Agency for Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction", shall be and become the property of *the Authority* (a) upon delivery at the construction site or upon being especially adapted for use in or as a part of the permanent construction, whichever may first occur in the case of materials to become part of the permanent construction and (b) in the case of those other materials purchased under the clause of the Contract entitled, "Agency For Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction" at the time of purchase, subject however to the Contractor's assumption of risk under the clause hereof entitled "Risks Assumed by the Contractor", subparagraph A.

The Contractor shall promptly furnish to the Construction Manager such bills of sale and other instruments as may be required by it properly executed, acknowledged and delivered, assuring to the Authority title to such materials, free of encumbrances and shall mark or otherwise identify all such materials as the property of *the Authority*.

### 40. ASSIGNMENTS AND SUBCONTRACTS

Any assignment or other transfer by the Contractor of this Contract or any part hereof or of any of his rights hereunder or of any moneys due or to become due hereunder and any delegation of any of his duties hereunder without the express consent in writing of the Construction Manager shall be void and of no effect as to the Construction Manager, provided, however, that (1) the Contractor may assign all or any portion of this Contract to Collavino Construction Company, Inc., a Delaware corporation, which is a wholly owned subsidiary of Contractor ("Contractor's Subsidiary"), or (2) subcontract all or any portion of this Contract to Contractor's Subsidiary, without the prior written consent of Construction Manager, such consent being hereby granted. The Contractor may subcontract portions of the Work to such persons as the Construction Manager may, from time to time, expressly approve in writing. The Corporate and Personal Guarantee Agreements, included in Rider U (Additional Provisions) shall be reaffirmed for all Assignments and Subcontracts to new entities. For each individual, partnership or corporation proposed by the Contractor as a Subcontractor, the Contractor shall submit to the Construction Manager a certification or, if a certification cannot be made, a statement by such person, partnership or corporation to the same effect as the certification or statement required from the Contractor pursuant to the clauses of the "Instructions for Bidders and Bid Proposal Form" entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Suspension, Debarment, Disqualification, Prequalification Denial or Termination, Etc; Disclosure of Other Required Information", "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent Fee or Other Fee" and "Certification of Participation in a State-Registered Apprenticeship Program". The Certification of Participation in a State-Registered Apprenticeship Program shall only be applicable to each Subcontractor whose total amount of subcontract under this Contract is greater than \$1 Million Dollars. For each agreement in an amount greater than \$100,000 entered into by Contractor with a Subcontractor or Materialman, or for each agreement greater than \$100,000 with a Subcontractor or Materialman of any tier, the Contractor shall obtain the certifications and all necessary disclosure forms from each such Subcontractor or Materialman of any tier, all as set forth in Rider K (Project Corruption Prevention Program) to this Contract. All further subcontracting by any Subcontractor shall also be subject to such approval of the Construction Manager. Approval of a Subcontractor may be conditioned on (among other things) the furnishing, without expense to the Construction Manager, of a surety bond guaranteeing payment by the Subcontractor of claims of Materialmen, Subcontractors, workmen and other third persons arising out of the Subcontractor's performance of any part of the Work. No consent to any assignment or other transfer, and no approval of any Subcontractor, shall under any circumstances operate to relieve the Contractor of any of his

obligations; no subcontract, no approval of any Subcontractor and no act or omission of the Construction Manager shall create any rights in favor of such Subcontractor and against the Construction Manager; and as between the Construction Manager and the Contractor, all assignees, Subcontractors, and other transferees shall for all purposes be deemed to be agents of the Contractor. Moreover, all subcontracts and all approvals of Subcontractors shall be and, regardless of their form, shall be deemed to be conditioned upon performance by the Subcontractor in accordance with this Contract; and if any Subcontractor shall fail to perform the Contract to the satisfaction of the Construction Manager, the Construction Manager shall have the absolute right to rescind his approval forthwith and to require the performance of the Contract by the Contractor personally or through other approved Subcontractors.

In the event 1 WTC terminates Construction Manager or enters into agreement with a third party or third parties, for such party or parties to assume management and operation of some or all of the World Trade Center, 1 WTC shall have the right to assign this Contract in whole or in part to such third party or parties following advance written notice to the Contractor, or, to substitute such third party as Construction Manager in this Contract.

#### **41. CLAIMS OF THIRD PERSONS**

The Contractor undertakes to pay all claims lawfully made against him by Subcontractors, Materialmen and workmen, and all claims lawfully made against him by other third persons arising out of or in connection with or because of the performance of this Contract and to cause all Subcontractors to pay all such claims lawfully made against them.

#### **42. CERTIFICATES OF PARTIAL COMPLETION**

If at any time prior to the rendition of the Certificate of Final Completion, any portion of the permanent construction has been satisfactorily completed, and if in the judgment of the Construction Manager such portion of the permanent construction is not necessary for the operations of the Contractor but will be immediately useful to and is needed by the Construction Manager for other purposes, the Construction Manager may render to the Construction Manager and to the Contractor a certificate in writing to that effect (herein called a Certificate of Partial Completion), and thereupon or at any time thereafter the Construction Manager may take over and use the portion of the permanent construction described in such Certificate and exclude the Contractor therefrom.

The rendition of a Certificate of Partial Completion shall not be construed to constitute an extension of the Contractor's time to complete the portion of the permanent construction to which it relates in the event that he has failed to complete the same in accordance with the terms of this Contract. Moreover, the acceptance of a Certificate of Partial Completion by the Construction Manager shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

#### **43. CERTIFICATE OF FINAL COMPLETION**

After the satisfactory completion of all Work whatsoever required and the making of such tests and inspections as may be necessary or desirable, the Engineer shall render to the Construction Manager and to the Contractor a certificate in writing (herein called the Certificate of Final Completion) certifying that in his opinion all Work under this Contract, including Extra Work, has been completed in accordance with the Contract Drawings and the requirements of the Engineer, and certifying the date as of which it was so completed.

The rendition of the Certificate of Final Completion shall not be construed to constitute an extension of the Contractor's time for performance in the event that he has failed to complete the Work in accordance with the terms of this Contract. Moreover, the acceptance of the Certificate of Final Completion by the Construction Manager shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

**44. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.**

During the term of this Contract, the Contractor shall not offer, give or agree to give anything of value either to Construction Manager, any 1 WTC or Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing such entities, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, or other person or firm representing such entities of duties involving transactions with the Contractor on behalf of such entities, whether or not such duties are related to this Contract or any other Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Contract or any other Authority contract), etc., which might tend to obligate the Construction Manager employee to the Contractor, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Contract or any other Authority contract.

Where used in this clause, the term "Authority" shall be deemed to include all subsidiaries of the Authority. Currently, those subsidiaries are 1 WTC, the Port Authority Trans-Hudson Corporation (PATH), the Newark Legal and Communications Center and the New York and New Jersey Railroad Corporation.

In addition, during the term of this Contract, the Contractor shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated as of April 11, 1996 (a copy of which is available upon request to the Office of the Secretary of the Authority).

The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.



## **CHAPTER V**

### **WARRANTIES MADE AND LIABILITY ASSUMED BY THE CONTRACTOR**

#### **45. CONTRACTOR'S WARRANTIES**

The Contractor represents and warrants:

- A. That he is financially solvent, that he is experienced in and competent to perform the type of services contemplated by this Contract, that the facts stated or shown in any papers submitted or referred to in connection with his Proposal are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;
- B. That he has carefully examined and analyzed the provisions and requirements of this Contract and inspected the construction site, that from his own investigations he has satisfied himself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to him for such examination, analysis, inspection and investigations was adequate;
- C. That the Contract is feasible of performance in accordance with all its provisions and requirements and that he can and will perform it in strict accordance with such provisions and requirements;
- D. That no Commissioner, Director, officer, agent or employee of the Construction Manager, the Authority or 1 WTC is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder; and
- E. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Construction Manager, 1 WTC or the Authority, its Commissioners, Directors, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, existence or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered at the construction site; (3) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (4) the general or local conditions which may in any way affect this Contract or its performance; (5) the price of the Contract; or (6) any other matters, whether similar to or different from those referred to in (1) through (5) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

Moreover, the Contractor accepts the conditions at the construction site as they may eventually be found to exist and warrants and represents that he can and will perform the Contract under such conditions and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at his own cost and expense, anything in this Contract to the contrary notwithstanding.

Nothing in the Contract Drawings or any other part of the Contract is intended as or shall constitute a representation by the Construction Manager or 1 WTC as to the feasibility of performance of this Contract or any part thereof. Moreover, the Construction Manager or 1 WTC does not warrant or represent either by issuance of the Contract Drawings or by any provision of this Contract as to time for performance or completion or otherwise that the Contract may be performed or completed by the times required herein or by any other times.

The Contractor further represents and warrants that he was given ample opportunity and time and by means of this paragraph was requested by the Construction Manager to review thoroughly all documents forming this Contract prior to opening of Proposals on this Contract in order that he might request inclusion in this Contract of any statement, representation, promise or provision which he desired or on which he wished to place reliance; that he did so review said documents, that either every such statement, representation, promise or provision has been included in this Contract or else, if omitted, that he expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

The Contractor further recognizes that the provisions of this numbered clause (though not only such provisions) are essential to 1 WTC's consent to enter into this Contract and that without such provisions, the Construction Manager would not have entered into this Contract as agent for 1 WTC.

#### **46. RISKS ASSUMED BY THE CONTRACTOR**

The Contractor assumes the following distinct and several risks, whether they arise from acts or omissions (whether negligent or not) of the Contractor, of the Construction Manager, 1 WTC, or of third persons or from any other cause, and whether such risks are within or beyond the control of the Contractor, excepting only risks which arise solely from affirmative acts done by the Construction Manager and 1 WTC subsequent to the opening of Proposals on this Contract with actual and willful intent to cause the loss, damage and injuries describe in subparagraphs A through D below:

- A. The risk of loss or damage to the permanent construction prior to the rendition of the Certificate of Final Completion (other than loss or damage to the portions of the permanent construction with respect to which Certificates of Partial Completion have been issued), and the Contractor shall forthwith repair, replace and make good any such loss or damage to the permanent construction without cost to the Construction Manager or 1 WTC;
- B. The risk of loss, damage to or alterations of the structures to be demolished occurring prior to completion of demolition by the Contractor (such structures being still included, however, in the term "Work"). In the event of such loss, damage or alterations, the Contractor shall nevertheless complete the performance of the Work, including the demolition, without additional cost to the Construction Manager or 1 WTC and without compensation for lost salvage value;

- C. The risk of claims, fines or penalties, just or unjust, made by third persons or assessed by courts or governmental agencies or entities against the Contractor or the Construction Manager or 1 WTC on account of injuries (including wrongful death), loss, damage or liability of any kind whatsoever arising or alleged to arise out of or in connection with the performance of the Work (whether or not actually caused by or resulting from the performance of the Work) or out of or in connection with the Contractor's operations or presence at or in the vicinity of the construction site or 1 WTC premises, including claims against the Contractor or the Construction Manager or 1 WTC for the payment of workers' compensation, whether such claims, fines or penalties are made or assessed and whether such injuries, damage, loss and liability are sustained at any time both before and after the rendition of the Certificate of Final Completion;
- D. The risk of loss or damage to any property of the Contractor, and of claims made against the Contractor or the Construction Manager or 1 WTC for loss or damage to any property of Subcontractors, Materialmen, workmen and others performing the Work, occurring at any time prior to completion of removal of such property from the construction site or 1 WTC premises or the vicinity thereof.

The Contractor shall, indemnify the 1 WTC Indemnitee Group against all claims described in subparagraphs C and D above and for all expense incurred by it in the defense, settlement or satisfaction thereof, including expenses of attorneys, except where indemnity would be precluded by New York State General Obligations Law, Section 5-322.1 or by other applicable law. If so directed, the Contractor shall defend against any claim described in subparagraphs C and D above, in which event he shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority. Unless a claim is one which the Contractor is not required to indemnify the Authority against as described in the first sentence of this paragraph, such defense shall be at the Contractor's cost.

The provisions of this numbered clause shall also be for the benefit of the Commissioners, officers, agents and employees of the Authority, so that they shall have all the rights which they would have under this numbered clause if they were named at each place above at which the Authority is named, including a direct right of action against the Contractor to enforce the foregoing indemnity, except, however, that the Authority or 1 WTC by action of its Board of Commissioners may at any time in its sole discretion and without liability on its part cancel the benefit conferred on any of them by this numbered clause, whether or not the occasion for invoking such benefit has already arisen at the time of such cancellation.

Neither the issuance of a Certificate of Completion nor the making of Final Payment shall release the Contractor from his obligations under this numbered clause. Moreover, neither the enumeration in this numbered clause nor the enumeration elsewhere in this Contract of particular risks assumed by the Contractor or of particular claims for which he is responsible shall be deemed (a) to limit the effect of the provisions of this numbered clause or of any other clause of this Contract relating to such risks or claims, (b) to imply that he assumes or is responsible for risks or claims only of the type enumerated in this numbered clause or in any other clause of this Contract, or (c) to limit the risks which he would assume or the claims for which he would be responsible in the absence of such enumerations.

#### **47. NO THIRD PARTY RIGHTS**

Except with respect to the Authority as set forth below, nothing contained in this Contract is intended for the benefit of other third persons, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action," or except to the extent indemnitee or insurance obligations provide for third party rights in this Contract.

For the avoidance of doubt, the relationship of the Authority to this Contract and the Project is set forth below in this Section.

- A. The Authority is hereby deemed an intended third-party beneficiary of this Contract. Contractor acknowledges and agrees that the performance of the Work is for the benefit of the Authority, and that the Authority shall have the right to enforce the obligations of Contractor under this Contract against Contractor directly and enjoy the benefits and rights in the entire Contract including, without limitation, Sections 26, 28, 29, and 46.
- B. The Authority, from time to time and on behalf of 1 WTC, either (i) may perform certain obligations of 1 WTC, or (ii) may supply or loan to 1 WTC employees of the Authority for the performance of the obligations of 1 WTC.
- C. Contractor shall have no direct claim, right, or cause of action against Authority (i) by virtue of Authority's rights under this Section 47 (ii) for any acts, errors or omissions of its employees when engaged or acting on behalf of 1 WTC, or (iii) otherwise in connection with this Contract.
- D. Contractor shall look solely to 1 WTC for payment of any amount due and owing Contractor under this Contract or for any claim, cause of action or damages in connection with the Project. Notwithstanding anything to the contrary, Contractor shall have no recourse in connection with this Contract or the Project against (i) the Authority, or (ii) any present or future Commissioner, officer, director, trustee, employee, agent or volunteer of the Authority. Such exculpation of liability is absolute and without any exception, and shall survive any termination, expiration or assignment of this Contract.
- E. From time to time, direct references to the Authority are made in this Contract. Such references are for emphasis only, and no negative inference should be drawn from any omission or absence of a reference to the Authority in a specific provision.

#### **48. INSURANCE PROCURED BY CONTRACTOR**

Contractor is obligated to provide coverage as in the attached Insurance Specifications, **Rider D** (Insurance Rider).

The liability policies shall name the entities listed in **Rider D** (Insurance Rider) as Additional Insureds.

In the event, however, that 1 WTC, in its sole discretion, elects at any time to provide an owner-controlled insurance program, such program shall be described more specifically in **Rider DX** ("Owner Controlled Insurance Program" or "OCIP").

If 1 WTC implements an OCIP, Contractor shall take all steps necessary: (i) to conform its insurance program to the OCIP, (ii) to exclude from calculation of the Lump Sum or the cost of any Extra Work, including the compensation of any Subcontractor of any tier, or any other person or entity performing any portion of the Work or Extra Work, any insurance premiums or other charges for any insurance to the extent such coverage is provided under the OCIP, (iii) to comply with the requirements of Rider DX and the OCIP and, in turn, cause all Subcontractors of any tier to conform their insurance programs to the OCIP, (iv) to avoid any duplication of coverage provided by, under or through the OCIP, and any other savings of any other costs associated with such insurance, and (v) to assist in the orderly transition of insurance programs.

If requested by 1 WTC, Contractor shall furnish reasonable evidence confirming the amount of any exclusion or reduction in premiums and the total credit received by Contractor, Subcontractors of any tier, or any other person or entity performing any portion of the Work or Extra Work, and any other costs associated with such insurance.

## CHAPTER VI RIGHTS AND REMEDIES

### 49. RIGHTS AND REMEDIES OF 1 WTC

1 WTC shall have the following rights in the event the Construction Manager shall deem the Contractor guilty of a breach of any term whatsoever of this Contract:

- A. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through Other Contractors.
- B. The right to cancel this Contract as to any or all of the Work yet to be performed.
- C. The right to specific performance, an injunction or any other appropriate equitable remedy.
- D. The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the Contractor's failure to procure insurance satisfactory to the Construction Manager within the time limit specified in the Clause hereof entitled "Insurance Procured By The Contractor" and the following, whether or not the time has yet arrived for performance of an obligation under this Contract: A statement by the Contractor to any representative of the Construction Manager indicating that he cannot or will not perform any one or more of his obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that he will be able to perform any one or more of his obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that he will be able to perform any one or more of his obligations under this Contract; any false certification at any time by the Contractor as to any material item certified pursuant to the clauses of the Instructions for Bidders and Bid Proposal Form entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Suspension, Debarment, Disqualification, Prequalification Denial or Termination, Etc; Disclosure of Other Required Information", "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent Fee or Other Fee", and "Certification of Participation in a State-Registered Apprenticeship Program", any false certification at any time by the Contractor or a Subcontractor pursuant to the clause "Prevailing Rate of Wage Certification" set forth in the Instructions for Bidders and Bid Proposal Form, or the willful or fraudulent submission of any signed statement pursuant to such clauses which is false in any material respect; or the Contractor's incomplete or inaccurate representation of its status with respect to the circumstances provided for in such clauses.

The enumeration in this numbered clause or elsewhere in this Contract of specific rights and remedies of the Construction Manager shall not be deemed to limit any other rights or remedies which the Construction Manager would have in the absence of such enumeration; and no exercise by the Construction Manager of any right or remedy shall operate as a waiver of any other of its rights or remedies not inconsistent therewith or to estop it from exercising such other rights or remedies.

**50. RIGHTS AND REMEDIES OF CONTRACTOR**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by the Construction Manager, the Contractor expressly agrees that no default, act or omission of any member of the 1 WTC Indemnitee Group shall constitute a material breach of this Contract, entitling him to cancel or rescind it or (unless the Construction Manager shall so direct) to suspend or abandon performance. Contractor agrees that under no circumstances shall it have any recourse against the Authority, its Commissioners, directors, employees, agents, successors and assigns for any claim, right or demand arising out of or related to the Contract or performance herein.

**51. PERFORMANCE OF WORK AS AGENT FOR CONTRACTOR**

In the exercise of its right to take over and complete Work as agent for the Contractor, for which provision is made in the clause hereof entitled "Rights and Remedies of 1 WTC", the Construction Manager shall have the right to take possession of and use or permit the use of any and all plant, materials, equipment and other facilities provided by the Contractor for the purpose of the Work and the Contractor shall not remove any of the same from the site of the Work without express permission. Unless expressly directed to discontinue the performance of all Work, the Contractor shall continue to perform the remainder thereof in such manner as in no way will hinder or interfere with the portions taken over by the Construction Manager.

In the certificate of total compensation earned, for which provision is made in the clause hereof entitled "Final Payment", the Construction Manager will separately state the amount of Work performed by the Construction Manager as agent for the Contractor, credit to the Construction Manager the cost thereof, and credit to the Contractor the compensation earned thereby; and the difference between them shall be payable by the Contractor to the Construction Manager, or vice versa as the case may be. If such difference is in its favor, the Construction Manager may deduct it from any moneys due the Contractor, and if such moneys be insufficient, the balance thereof shall be payable to it on demand; if in the Contractor's favor, it shall constitute part of the Final Payment.

The exercise by the Construction Manager of its right to take over the Work shall not release the Contractor or his sureties from any of his or their obligations or liabilities under this Contract or the Performance and Payment Bond.

**52. NO ESTOPPEL OR WAIVER**

1 WTC or the Construction Manager shall not be precluded or estopped by any acceptance, certificate or payment, final or otherwise, issued or made under this Contract or otherwise issued or made by either of them, or any Director, officer, agent or employee of either of them, from showing at any time the true amount and character of Work performed, or from showing that any such acceptance, certificate or payment is incorrect or was improperly issued or made; and 1 WTC or the Construction Manager shall not be precluded or estopped, notwithstanding any such acceptance, certificate or payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on his part to comply strictly with this Contract, and any moneys which may be paid to him or for his account in excess of those to which he is lawfully entitled.

Neither the acceptance of the Work or any part thereof, nor any payment therefor, nor any order, approval or certificate issued under this Contract or otherwise issued by the Construction Manager, 1 WTC or any Director, officer, agent or employee of either of them, nor any permission or direction to continue with the performance of Work, nor any inspection or approval of any portion of the Work, nor any performance by the Construction Manager or 1 WTC of any of the Contractor's duties or obligations, nor any aid lent to the Contractor by the Construction Manager in his performance of such duties or obligations, nor any other thing done or omitted to be done by the Construction Manager or 1 WTC or their Directors, officers, agents or employees shall be deemed to be a waiver of any provision of this Contract or of any rights or remedies to which the Construction Manager or 1 WTC may be entitled because of any breach thereof. No cancellation, rescission or annulment hereof, in whole or as to any part of the Work, because of any breach hereof, shall be deemed a waiver of any money damages to which the Construction Manager or 1 WTC may be entitled because of such breach. Moreover, no waiver by the Construction Manager or 1 WTC of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.



## **CHAPTER VII MISCELLANEOUS**

### **53. SUBMISSION TO JURISDICTION**

The Contractor hereby irrevocably submits himself to the jurisdiction of the Courts of the State of New York and to the jurisdiction of the Courts of the State of New Jersey in regard to any controversy arising out of, connected with, or in any way concerning the Proposal or this Contract. The Contractor agrees that service of process on the Contractor in relation to such jurisdiction may be made, at the option of the Construction Manager, either by registered or certified mail addressed to the applicable office as provided for in the clause hereof entitled "Service of Notices on the Contractor", by registered or certified mail addressed to any office actually maintained by the Contractor or by actual personal delivery to the Contractor if the Contractor be an individual, to any partner if the Contractor be a partnership or to an officer, director or managing or general agent if the Contractor be a corporation.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

### **54. PROVISIONS OF LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

### **55. INVALID CLAUSES**

If any provision of this Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

### **56. NON-LIABILITY OF THE CONSTRUCTION MANAGER OR 1 WTC REPRESENTATIVES**

Neither the Construction Manager, 1 WTC, nor any Director, officer, agent, or employee thereof shall be charged personally by the Contractor with any liability or held liable to him under any term or provision of this Contract, or because of its execution or attempted execution, or because of any breach hereof.

### **57. SERVICE OF NOTICES ON THE CONTRACTOR**

Whenever provision is made in this Contract for the giving of any notice to the Contractor, its deposit in any post office or post office box, enclosed in a postpaid wrapper addressed to the Contractor at his office, or its delivery to his office, shall be sufficient service thereof as of the date of such deposit or delivery, except to the extent, if any, otherwise provided in the clause entitled "Submission to Jurisdiction". Until further notice to the Construction Manager the Contractor's office will be that stated in his Proposal. Notices may also be served personally upon the Contractor; or if a corporation, upon any officer, director, or managing or general agent; or if a partnership upon any partner.

**58. MODIFICATION OF CONTRACT**

No change in or modification, termination or discharge of this Contract, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or his duly authorized representative, provided, however, that any change in or modification, termination or discharge of this Contract expressly provided for in this Contract shall be effective as so provided.

The authority of any person to order Extra Work or to alter the Contract Drawings does not include the power to cancel, modify or waive any provision of the Form of Contract, and no officer or other representative of the Construction Manager shall have the power so to do.

**59. PUBLIC RELEASE OF INFORMATION**

The Contractor and all his Subcontractors shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to any member of the Construction Manager, 1 WTC or the Authority or the services performed in connection with this Contract, without first obtaining the written approval of the Construction Manager. Such approval may be withheld if for any reason the Construction Manager believes that the publication of such information would be harmful to the public interest or is in any way undesirable. This provision shall survive termination or expiration of this Contract.

CONTRACT WTC-XXX.XXX

**PERFORMANCE AND PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned<sup>5</sup> Contractor and surety company (or companies), as principal and surety (or sureties), respectively,

**Contractor**

**Surety**

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<sup>5</sup> Insert names of the Contractor and surety company (or companies) in the appropriate columns. If space is insufficient add rider.

If the Contractor is a corporation, give the state of incorporation, using also the phrase "a corporation organized under the laws of \_\_\_\_\_".

If the Contractor is a partnership, give full names of partners, using the phrase "co-partners doing business under the firm name of \_\_\_\_\_".

If the Contractor is an individual using a trade name, give individual name, using also the phrase "an individual doing business under the trade name of \_\_\_\_\_".

are hereby held and firmly bound unto Tishman Construction Corporation, a Delaware corporation, and 1 WTC, LLC ("Obligees") in the penal sum of

\_\_\_\_\_ Dollars

and \_\_\_\_\_ Cents (\$ \_\_\_\_\_), for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, representatives, executors, administrators, successors and assigns. Each surety, however, if there is more than one, shall be jointly and severally liable for said penal sum.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

The condition of the above obligation is that

WHEREAS, the above named principal has entered into a Contract in writing with the Obligees, a copy of which is hereby made a part of this bond as though herein set forth in full and which is designated Contract WTC-XXX.XXX - "World Trade Center - Lump Sum Sample Contract", and

WHEREAS, the Construction Manager and 1 WTC have required this bond for the faithful performance of all obligations imposed by said Contract and also for the payment of all lawful claims of Subcontractors, Materialmen and workmen arising out of the performance of said Contract;

NOW, if the said principal shall well and faithfully do and perform the things agreed by him to be done and performed according to the terms and true intent and meaning of said Contract and if all lawful claims of Subcontractors, Materialmen and workmen arising out of the performance of said Contract are paid, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that, provided the sureties shall comply with the provisions hereof, the aggregate liability of all sureties for any and all claims hereunder shall in no event exceed the penal amount of this obligation as hereinbefore stated.

This undertaking is for the benefit the Obligees and all Subcontractors, Materialmen and workmen having lawful claims arising out of the performance of said Contract, and all such Subcontractors, Materialmen and workmen (as well as the Obligees) shall have a direct right of action upon this bond; but the rights and equities of such Subcontractors, Materialmen and workmen shall be subject and subordinate to those of the 1 WTC Indemnatee Group.

The sureties, for value received, hereby stipulate and agree that the obligations of said sureties and their bond shall be in no way impaired or affected by any extensions of time, modification, omission, addition or change in or to the said Contract or the construction to be performed thereunder, or by any supervision or inspection or omission to supervise or inspect the construction, or by any payment thereunder before the time required therein, or by any waiver of any provision or condition thereof (whether precedent or subsequent), or by any assignment, subletting or other transfer thereof or of any part thereof or of any construction to be performed or any moneys due or to become due thereunder; and said sureties do hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulate and agree that any and all things done and omitted to be done by and in relation to assignees, Subcontractors and other transferees shall have the same effect as to said sureties as though done by or in relation to said principal.

The sureties shall give the Construction Manager the following notices:

- A. Written notice of an intent to pay any claim of a Subcontractor, Materialman or workman hereunder;
- B. Written notice within five (5) days of the institution of an action by a Subcontractor, Materialman or workman hereunder.

The sureties shall not pay the claim of any Subcontractor, Materialman or workman hereunder until the expiration of thirty (30) days after receipt by said Construction Manager of notice under either subparagraph A or B above, describing the claim to be paid.

IN WITNESS WHEREOF, the principal and the sureties have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

(Seal)

By <sup>6</sup>

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By <sup>7</sup>

APPROVED AS TO ACCEPTABILITY OF SURETIES:

\_\_\_\_\_  
Credit Manager

\_\_\_\_\_  
20

<sup>6</sup> If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

<sup>7</sup> Add signatures of additional sureties, if any.

**ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he resides at \_\_\_\_\_; that he is the \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

(Notary Seal)

\_\_\_\_\_  
(Notary Signature)

**ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, and known to me to be one of the members of the firm of \_\_\_\_\_ described in and who executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of said firm.

(Notary Seal)

\_\_\_\_\_  
(Notary Signature)

**ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL**

State of \_\_\_\_\_

SS:

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

(Notary Seal)

\_\_\_\_\_  
(Notary Signature)

**AFFIX ACKNOWLEDGMENT AND JUSTIFICATION OF SURETY**

CONTRACT WTC-XXX.XXX

**SPECIFICATIONS  
DIVISION 1  
GENERAL PROVISIONS**

**60. CONSTRUCTION REQUIRED BY THE SPECIFICATIONS**

These Specifications relate generally to performing the construction at the World Trade Center site.

These Specifications require the doing of all things necessary or proper for or incidental to the matter referred to in the immediately preceding paragraph, as shown on the Contract Drawings in their present form. In addition, all things shown on the Contract Drawings even though not expressly mentioned in these Specifications, all things mentioned in these Specifications even though not shown on the Contract Drawings, and all things not specified either on the Contract Drawings, or in the Specifications but involved in carrying out their intent and in the complete and proper execution of the matter referred to in the immediately preceding paragraph are required by these Specifications; and the Contractor shall perform the same as though they were specifically delineated, described and mentioned.

In case of a conflict between a requirement of the Contract Drawings and a requirement in Division 1 of the Specifications, the requirement of Division 1 shall control. In case of a conflict between a requirement contained in other Divisions of the Specifications and a requirement of the Contract Drawings, the more stringent requirement shall apply.

Some Sections of the Specifications make cross references to construction specified in other Sections of the Specifications, including cross references intended to avoid duplication by the bidders in quoting prices and to point out some of the necessity for coordination. Such cross references are not intended to be complete or all inclusive, and the Contractor shall ascertain for himself both the nature and the extent of all construction which may be related to that under each Section of the Specifications whether or not expressly referred to.

Some Sections of the Specifications contain a general description of the construction under such Sections. Such description is merely a very general one and is not intended to outline the construction required by the Specifications and Contract Drawings. Accordingly, such description shall be construed as in aid of and supplemental to, but in no case limiting, impairing or decreasing, the requirements elsewhere set forth with respect to the construction to be performed.

The Contractor's compensation for all construction whatsoever referred to in the Specifications and Contract Drawings in their present form, even though the need for certain items of such construction may be contingent upon future occurrences or determinations or upon other circumstances, shall be deemed to be included in the price(s) quoted by the Contractor in the Form of Contract unless the Specifications or Contract Drawings expressly state that compensation in addition to such price shall be payable for such items of construction. The express statement in some cases to the effect that certain construction shall be without additional cost to the Construction Manager shall not impair the application of this paragraph in other cases.

The distribution of various parts of the construction among the Divisions and Sections of the Specifications or among the Contract Drawings is not intended as a representation of the most effective or logical method of organizing, scheduling, or subcontracting the construction, and the Contractor shall ascertain for himself how to do so unless otherwise expressly prescribed in this Contract.

In all cases the provisions of the second paragraph of this numbered Section shall control.

#### **61. AVAILABLE PROPERTY**

Subject to the conditions elsewhere stated herein, those areas to be occupied by the permanent construction will be made available to the Contractor upon the commencement of his first operations at the construction site, together with an area shown cross-hatched on Contract Drawing No. G003 and designated "Area Available For Contractor's Use".

Any additional property which the Contractor desires for his operations shall be obtained by him at his own expense.

The Contractor will be permitted to use only so much of the aforesaid areas as is necessary for the performance of the Contract, and he must at all times so conduct his operations as not to encroach upon or block the portions used by others. The Construction Manager may at any time make joint or exclusive assignments of particular portions thereof, either to the Contractor or to others, and may take over and use for other purposes any portions which, in the opinion of Construction Manager, are not required for the performance of the Contract.

The Contractor shall daily clean up the areas made available to him so that they are free at all times of refuse, rubbish, scrap material or debris.

#### **62. OPERATIONS OF OTHERS**

During the time that the Contractor is performing the Contract, other persons will be engaged in other operations on or about the construction site including the work of other Authority contracts all of which shall remain uninterrupted.

The Contractor shall so plan and conduct his operations as to work in harmony with others engaged at the construction site and not to delay, endanger or interfere with the operations of others (whether or not specifically mentioned above), all to the best interests of 1 WTC, the Authority and the public and as may be directed by the Construction Manager.

#### **63. LABOR ACTIONS**

Whenever any labor strike, slowdown, work stoppage, picketing or other labor action which might interfere with the performance of the Contract, or of other Construction Manager, 1 WTC, Authority or PATH contracts, or the operation of any 1 WTC, Authority or PATH facility, or any operations at the World Trade Center site occurs at the World Trade Center site or at any other 1 WTC, Authority or PATH facility as a result of the Contractor's (or its Subcontractor's) utilization of particular means, methods or manpower to perform the Work required by the Contract, the Contractor shall pursue all remedies which are appropriate and available to him to avoid such interference.

#### **64. CONTRACTOR'S MEETINGS**

The Contractor shall conduct job progress and coordination meetings with Subcontractors in his field office every week, or as frequently as job conditions require or the Construction Manager may request. The Construction Manager shall be notified and, at his option, may attend these meetings. The Contractor shall prepare and distribute minutes to the Construction Manager and the Subcontractors within forty-eight (48) hours of the day following the meetings.

The Contractor shall attend separate job progress and coordination meetings with the Construction Manager every week, or at times otherwise requested by the Construction Manager.



## **65. CONTRACT DRAWINGS**

The Contract Drawings, referenced in **Rider B** (List of Drawings and Specifications), do not show all of the details of the Work and are intended only to illustrate the character and extent of the Work to be performed. Accordingly, they may be supplemented during the performance of the Work by the Construction Manager or by the Contractor subject to the approval of the Construction Manager, to the extent necessary to further illustrate the Work.

An indication on the Contract Drawings of the existence, nature or location of any utilities, structures, obstructions, conditions or materials does not constitute a representation as to the conclusions to be drawn therefrom nor a representation that no others exist in addition to those shown, even in the same location; nor does the absence of any indication on said drawings of the existence, nature or location of any utilities, structures, obstructions, conditions or materials constitute a representation that none exist.

After the Contract has been executed, the Contractor will be furnished two (2) copies of the Specifications and Contract Drawings without charge.

## **66. INTENTIONALLY DELETED**

## **67. SHOP DRAWINGS, CATALOG CUTS AND SAMPLES**

The Contractor shall specifically prepare for this Contract all Shop Drawings which may be required in addition to the Contract Drawings or in addition to any other drawings which the Design Team or Construction Manager may issue in supplementing the Contract Drawings.

The specific requirements elsewhere set forth in the Specifications for furnishing Shop Drawings, Catalog Cuts and samples for any particular portion of the Contract shall not limit the obligation of the Contractor to furnish Shop Drawings, Catalog Cuts and samples for any other portion when so required by the Construction Manager.

The Contractor shall submit a general "Submittal Schedule" for the Construction Manager's review, and for approval by the appropriate member of the Design Team, listing the planned transmittal date and estimated number in each specification section category of Shop Drawings, Catalog Cuts, pages of calculations and samples within thirty (30) days after receipt by the Contractor of the acceptance of the Proposal. A more detailed schedule shall be submitted no less than thirty (30) calendar days prior to the actual date of any submittal.

After checking and verifying all field measurements and after complying with applicable procedures specified hereunder, the Contractor shall submit to the Construction Manager for review, and for approval by the appropriate member of the Design Team, in accordance with the approved schedule of Shop Drawing submissions, or for other action if so indicated by the Construction Manager, four (4) copies and two (2) reproduces, unless otherwise requested, of all Shop Drawings which will bear a specific written indication that the Contractor has reviewed the submission for conformance to the requirements of the Contract Drawings.

All submissions shall be identified as the Construction Manager may require. The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, conformance to the specified performance and design criteria, materials, test results and similar information to enable the Construction Manager to review the submittal as required.

The Contractor shall also submit nine (9) copies to the Construction Manager for review, and for approval by the appropriate member of the Design Team, pursuant to the approved Submittal Schedule, of all Catalog Cuts and samples for conformance to the requirements of the Contract Drawings. All Catalog Cuts and samples shall have been reviewed by the Contractor and shall be accompanied by a specific written indication that the Contractor has reviewed the submittal for conformance with the Contract Drawings and shall be identified clearly as to material, supplier, manufacturer's procedures and pertinent data such as catalog numbers and the use for which intended.

Before submission of each Shop Drawing, Catalog Cut and sample, the Contractor shall have determined and verified all quantities, dimensions, conformance to the specified performance and design criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed and coordinated each Shop Drawing or Catalog Cut with other Shop Drawings and Catalog Cuts and with other requirements of the Work.

At the time of each submission, the Contractor shall give the Construction Manager specific written notice of each variation in any Shop Drawing, Catalog Cut and sample from the requirements of the Contract Drawings or Specifications and, in addition, shall cause a specific notation of each such variation to be made on each submittal to the Construction Manager, for review by Construction Manager and approval by the appropriate member of the Design Team of each such variation.

The Construction Manager's review and the Design Team's approval of Shop Drawings, Catalog Cuts or samples shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Drawings or Specifications unless the Contractor has in writing called the Construction Manager's attention to each such variation at the time of submission as required hereunder and the Design Team has given written approval of each by an express specific written notation thereof incorporated in or accompanying the Shop Drawing, Catalog Cut or sample approval. Approval of Shop Drawings, Catalog Cuts and samples which are inconsistent with the requirements of the Contract Drawings shall not be deemed to waive or change such requirements or to relieve the Contractor of its obligations to perform such requirements unless the Construction Manager shall expressly and specifically state that it is waiving or changing such requirements, as stated above.

Where a Shop Drawing, Catalog Cut or sample is required, no related Work shall be performed prior to the Construction Manager's review and Design Team's approval of the submission.

In preparing the Shop Drawings, the Contractor may adopt a sheet of any reasonable size which best suits its needs, but having adopted such size, all sheets thereafter of a similar nature shall be of the same size as that adopted. Each drawing shall have a margin on the top, bottom and right-hand side of one-half inch and on the left hand side a margin of one and one-half inches. Upon receipt of the submittal, the Construction Manager will review the Shop Drawing, Catalog Cut or sample for conformance to the design information and materials shown on the Contract Drawings and contained in the Specifications. Review by the Construction Manager and approval by the Design Team shall not constitute a complete review or approval of the means, methods, techniques, sequences or procedures of construction, except where a specific means, method, technique, sequence or procedure of construction is specifically delineated in or required by the Contract Drawings or Specifications, and the approval shall not constitute a review and approval in regard to safety precautions or programs incident thereto. The review and approval of a separate item will not in itself indicate approval of the assembly in which the item functions. Any design shown on the Shop Drawings and prepared by the Contractor, its Subcontractors, their detailers, or their professional engineers is the complete responsibility of the Contractor.

Within the number of working days hereinafter specified after receipt of the Shop Drawing prints, the appropriate member of the Design Team shall approve or not approve the same or require corrections or additions to be made thereon. When a Shop Drawing is not approved or if additions or corrections are required, the Construction Manager shall return within this period one (1) of the four (4) copies submitted and the Contractor shall make the revisions, corrections or additions shown thereon to be made. Contractor shall resubmit four (4) prints and one (1) brownline (reproducible) showing the drawing corrected as required. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Design Team on the previous submittal. Each drawing shall be corrected as required until the approval of the Design Team is obtained. After each resubmission, the Construction Manager shall have the number of working days hereinafter specified in which to approve revisions or corrections. If the Design Team rejects any Shop Drawing, Catalog Cut, or sample three (3) times, then Contractor shall be backcharged for all costs incurred by 1 WTC and/or Construction Manager as a result of such rejections.

The number of working days within which the Construction Manager shall advise the Contractor as to whether the Shop Drawings are approved, not approved, or require corrections or additions to be made thereto shall be as follows, except that twenty (20) working days shall be required for the Construction Manager to review Shop Drawings submitted with design calculations.

No. of Drawings Submitted Within 5 Consecutive Working Days for Each Discipline(*)	No. of Working Days for Construction Manager and Appropriate Member of Design Team to Review Shop Drawings
Up to 50	12
51 to 75	17
More than 75	22
* Disciplines shall be defined as follows: Structural, Architectural, Civil, Geotechnical, Mechanical, Electrical, Traffic and Environmental.	

Failure of the Contractor to provide thirty (30) calendar days' advance notice to the Construction Manager of any submittal shall result in a five (5) working day extension of the number of working days stated in the chart above. In no event shall an extension of the Construction Manager's review time provided for in this section relieve the Contractor from its duty to meet all contractual Milestone Dates.

As soon as approval has been given to any Shop Drawing or Catalog Cut, the Contractor shall within five (5) days send to the Construction Manager six (6) prints, except that when the Construction Manager specifically so directs, nine (9) prints shall be sent. After approval thereof, no change will be permitted thereon unless approved in writing by the Construction Manager. Before Final Payment for the Work is made, the Contractor shall furnish to the Construction Manager one (1) set of Shop Drawings, which have previously been prepared by the Contractor in accordance with requirements elsewhere specified in these Specifications, all clearly revised, completed and brought up to date showing the permanent construction as actually made. These drawings shall be in the form of mylar reproducible, from which clear prints can be made.

All drawings, data, calculations and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared in connection with this Contract and submitted to the Authority and 1 WTC shall become the property of 1 WTC. 1 WTC shall have the non-exclusive right to use or permit the use of all such drawings, data and other papers and any ideas or methods represented thereby for any purpose and at any time without additional compensation. No such papers shall be deemed to have been given in confidence. Any statement or legend to the contrary in connection with such drawings, data or other papers and in conflict with the provisions of this paragraph shall be void and of no effect.

#### **68. SUBSTITUTION**

Where a proprietary item or make is specified or mentioned herein or called for or mentioned on the Contract Drawings and the phrases "similar and equal to" or "approved equal" are used in connection therewith, the utilization of any other item or make will be deemed a substitution. Substitution for the proprietary item or make specifically named may be made only in accordance with the Section hereof entitled "Workmanship and Materials" and in accordance with the following.

Whenever materials or equipment are specified or described in the Contract Drawings or Specifications by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of another supplier or manufacturer may be accepted by the Construction Manager if sufficient information and proof is submitted by the Contractor to permit the Construction Manager to determine that the material or equipment proposed is equivalent or equal to that named and the Construction Manager approves the substitution. The procedure for review by the Construction Manager will include the following. Requests for review of substitute items of material and equipment will not be accepted by the Construction Manager from anyone other than the Contractor. If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor shall make a timely written application to the Construction Manager for approval thereof, certifying that the proposed substitution will perform at least the identical functions and achieve at least the identical results called for by the specified product and otherwise be equal to the specified product with regard to, but not limited to, durability, maintenance, strength, energy costs and record of proven performance. The application shall state that the evaluation and approval of the proposed substitution shall not delay the Contractor's completion of the Work as required by the Contract, whether or not approval of the substitution will require a change in the construction and, in no event will the Contractor be granted an extension of time for completion of any portion of the Work for reasons related directly or indirectly to the evaluation of the proposed substitution or to the proposed substitution itself. Any variations of the proposed substitution from that specified shall be identified in the application, and maintenance, repair and replacement services for the substitution shall be indicated. The Construction Manager may require the Contractor to furnish at the Contractor's expense additional laboratory test data concerning the proposed substitution.

Such submission to the Construction Manager shall be made only by including the requested substitution in the list of materials required to be submitted to the Construction Manager in accordance with the Section hereof entitled "Inspections and Rejections" within forty-five (45) calendar days after the receipt of the acceptance of the Contractor's Proposal. After the approval of said list, no substitutions will be permitted, except that a brand or make named in the Specifications may be submitted for approval in lieu of a brand or make on said list. Any such submission shall not imply, or impose on the Construction Manager, any obligation whatsoever to discuss, disclose or justify the reasons for his opinion, approval, acceptance or rejection.

The Construction Manager shall be the sole judge of as to whether a proposed substitution will be approved, and no substitution shall be ordered or utilized without the Construction Manager's prior written approval. The Construction Manager may require Contractor to furnish at Contractor's expense a special performance guarantee or other assurance with respect to any approved substitution. Furthermore, the approval of any substitute proprietary item or make shall not in any way entitle the Contractor to additional compensation therefor.

Notwithstanding such approval, however, the Contractor assumes the risk that such approved substitute item or make is not equal to that shown or specified and if at any time the substitution shall appear not to be so equal he shall replace the substitution with that originally shown on the Contract Drawings or called for in the Specifications at his own cost and reimburse the Construction Manager for any loss occurring on account of the substitution failing to be equal, notwithstanding that it had been previously approved for use by the Construction Manager.

The construction called for by the Contract Drawings may be adapted for a particular proprietary item or make of material or equipment. Therefore, if any construction not required by the Contract Drawings or Specifications in their present form is necessary or desirable because of the use of substitute item or make of material or equipment (even though such other item or make is approved by the Construction Manager), such construction shall be furnished or performed by the Contractor at his expense and subject to the approval of the Construction Manager.

#### **69. WORKMANSHIP AND MATERIALS**

Workmanship and materials shall in every respect be free from defects of any kind and shall be in accordance with the best modern practice and whenever the Contract Drawings, Specifications or directions of the Construction Manager admit of a doubt as to what is permissible or fail to note the quality of any construction the interpretation which calls for the best quality is to be followed.

Workmanship shall conform to applicable Specifications, manufacturer's instructions and recommendations for installation of products for the applications shown on the Contract Drawings, all of which shall be subject to the provisions of the Section of Division 1 GENERAL PROVISIONS entitled "Inspections and Rejections".

All items provided in this Contract that use dates in the recording, storing or processing of information shall use such dates correctly at all times including using such dates correctly in the recording, storing or processing of information after January 1, 2000 (Year 2000 Compliant).

Materials and Equipment incorporated into the Work shall be new except as may be otherwise herein specifically required, and shall comply with make, size, type and quality specified, or as specifically approved in writing by the Construction Manager in accordance with the Section of Division 1 GENERAL PROVISIONS entitled "Substitution".

Reference to standards of any society, institution, association, or governmental authority in the Specifications or on the Contract Drawings, whether specific or by implication, shall mean for such standards which are part of the building code in effect for Work of this Contract the edition date published in such code; and such references which are not part of the building code, shall mean the latest edition date in effect at the time of opening of Proposals upon the present Contract unless specifically stated otherwise.

If required by the Construction Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment to be employed by the Contractor in performing the Work. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the approved instructions of the applicable supplier except as otherwise provided in the Contract Drawings or Specifications.

In case of a discrepancy between a description or requirement in the Contract Drawings for any material or equipment and a catalog number or other designation for the same material or equipment (even though stated to be acceptable), the description or requirements shall control.

In various paragraphs of these Specifications, references may be made to certain standard or tentative specifications or requirements of various organizations. Unless otherwise stated, these references are to be construed as referring to the specifications and requirements in effect on the date set for opening bids upon the present Contract.

All inventions, ideas, designs and methods contained in the Specifications and Contract Drawings in which 1 WTC has or may acquire patent, copyright or other property rights are hereby expressly reserved for the exclusive use of the Authority and/or 1 WTC. The Specifications and Contract Drawings contain confidential information which is disclosed only to enable this Contract to be performed. Said Specifications and Drawings must not be used for any purpose detrimental to the interest of 1 WTC and must not be produced or copied in whole or in part or used for furnishing information to others without the written consent of 1 WTC, provided, however, that the Contractor may, when the performance of the Contract so requires, furnish said information to others for the purpose of engaging or informing Subcontractors and Materialmen.

If, in accordance with this Contract, the Contractor furnishes research, development or consultative services in connection with the performance of the Contract and if in the course of such research, development or consultation patentable subject matter is produced by the Contractor, its officers, agents, employees, Subcontractors or Materialmen, 1 WTC and/or the Authority shall have, without cost or expense to it, an irrevocable, non-exclusive, royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by 1 WTC and/or the Authority. Promptly upon request by the Construction Manager or 1 WTC, the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to 1 WTC, but as between the Contractor and 1 WTC the license herein provided for shall nevertheless arise for the benefit of 1 WTC immediately upon the production of said subject matter and shall not await formal exemplification in a written license agreement as provided for above. Such license may be transferred by 1 WTC to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by 1 WTC, but such license shall not be otherwise transferable.

The right to use all material, software, firmware, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction required in connection with this Contract and to which a patent, copyright or other intellectual property right applies or may apply shall be obtained by the Contractor without separate or additional compensation whether the same is patented, copyrighted or otherwise protected as an intellectual property right before, during or after the performance of the Contract.

The Contractor shall defend, indemnify the 1 WTC Indemnatee Group against and save them harmless from all loss and expense, including, without limitation, attorneys' fees and costs, incurred in the defense, settlement or satisfaction of any claims in the nature of patent, copyright or other intellectual property right infringement arising out of or in connection with 1 WTC or Authority use, in accordance with the preceding two paragraphs of this numbered clause, of such subject matter or material, software, firmware, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction to which a patent, copyright or other intellectual property right applies or may apply. If requested by the Construction Manager or 1 WTC and if notified promptly in writing of any such claim, the Contractor shall conduct all negotiations with respect to and defend such claim without expense to 1 WTC or the Authority. If 1 WTC or the Authority be enjoined from using any of the facilities which form the subject matter of this Contract and as to which the Contractor is to indemnify the 1 WTC Indemnatee Group against patent, copyright or other intellectual property right claims, 1 WTC may, at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Contractor to supply, temporarily or permanently, facilities not subject to such injunction and not infringing any patent, copyright or other intellectual property right or to remove all such facilities and refund the cost thereof to 1 WTC or to take such steps as may be necessary to ensure compliance by 1 WTC with such injunction, all to the satisfaction of 1 WTC and all without cost or expense to any member of the 1 WTC Indemnatee Group.

#### **70. INSPECTIONS AND REJECTIONS**

All Work and all construction, processes of manufacture and methods of construction involved in or related to the performance of the Work shall be at all times and places subject to the inspection of the Construction Manager and/or Design Team, and the enumeration in these Specifications of particular portions of such Work, construction, processes of manufacture or methods of construction which will or may be inspected by the Construction Manager and/or Design Team shall not be deemed to imply that only such Work, construction, processes of manufacture and methods of construction will or may be so inspected. The Construction Manager and/or Design Team shall be the judge of the quality and suitability of the Work, construction, processes of manufacture and methods of construction for the purposes for which they are used or to be used. Should they fail to meet the approval of the Construction Manager and Design Team, the Work, construction, processes of manufacture and methods of construction shall be forthwith reconstructed, made good, replaced or corrected, as the case may be, by the Contractor at its own expense. Rejected material shall be removed immediately from the site. The fact that the Construction Manager and/or Design Team have approved the materials and workmanship shall not relieve the Contractor from its obligation to supply other material and workmanship when so ordered by the Construction Manager.

The Contractor, at its own expense, shall furnish such facilities and give such assistance for inspection as the Construction Manager and/or Design Team may direct. In the case of materials required by the Specifications to be inspected in the factory or plant, and in the case of any other items which the Construction Manager may designate, the Contractor shall secure for the Construction Manager and/or Engineer, and their Inspectors, free access to all parts of such factories or plants and shall furnish to the Construction Manager and/or Design Team three (3) copies of purchase orders, two (2) copies of mill shipping statements and four (4) copies of shipping statements. Moreover, in the case of such materials to be factory or plant inspected, the Contractor shall give at least ten (10) days' notice to the Construction Manager of his intention to commence the manufacture or preparation of such materials.

Other than the materials and equipment specifically required to be inspected at the manufacturer's factory or plant, all materials will be inspected at the construction site and any portions thereof which are rejected by the Construction Manager and/or Design Team shall be immediately removed from the construction site by the Contractor and shall be replaced with new materials by the Contractor at his own expense.

In the case of materials to be inspected at the construction site, the Contractor shall submit a list of all such materials in triplicate to the Construction Manager for transmittal to the Design Team for its approval prior to ordering same. The list shall be submitted within forty-five (45) calendar days after receipt of the notice of acceptance and shall contain the following information:

- A. Classification of submittal in accordance with the following:
  - Class I - A submittal for record of an expressly specified item.
  - Class II - A submittal of an item which conforms to an express generic specification or a submittal which is deemed by the Contractor to be identical to an expressly specified item.
  - Class III - A submittal which is deemed by the Contractor to be functionally equivalent but not identical to a specified item.
- B. In the case of Class II and Class III, the Contractor shall supply adequate information to the Construction Manager to enable the Construction Manager to compare the specified item and the proposed substitution. Information shall include, but need not be limited to, technical specifications, Catalog Cuts, drawings, references to existing installations and test data, or any other data required by the Construction Manager.
- C. In the case of fabricated materials for which Shop Drawings are to be prepared, a brief description of the material and the statement "see Shop Drawings".
- D. In the case of materials or equipment listed in manufacturer's catalogs, the list shall contain the vendor's name, the manufacturer's name, brand name, style designation, catalog number and, where the Specifications require Catalog Cuts, the statement "see Catalog Cut".
- E. In the case of materials or equipment for which Shop Drawings are not to be prepared, and which are not listed in any catalog, the list shall contain a complete description of the material or equipment, which shall be in sufficient detail to describe completely the materials or equipment and quality therefor.

The Construction Manager shall advise the Contractor whether said list is approved or requires corrections or additions within the number of working days indicated in the chart below:

Type of Submittal	No. of Working Days for Construction Manager to Approve/Disapprove Items
Class I Material submittals	10
Portland Cement mix designs that require confirmation of the 28-day properties	35
Changes in asphalt mix designs that need to be confirmed with a batch mix at the plant	35
Class II Material submittals	20
Class III Material submittals	30



Failure of the Contractor to provide thirty (30) calendar days' advance notice to the Construction Manager of any submittal shall result in a five (5) working day extension of the number of days stated in the chart above. In no event shall an extension of the Construction Manager's review time provided for in this Section relieve the Contractor from its duty to meet all contractual Milestone Dates.

Within ten (10) working days after receipt of said list, the Construction Manager shall notify the Contractor of which items are approved and which disapproved. Within two (2) working days thereafter, the Contractor shall resubmit a new list covering those items which were disapproved. After each such re-submission the Construction Manager shall have a similar period of ten (10) days in which to approve or disapprove.

Should materials or equipment be delivered to the construction site without having been placed on the aforementioned list and approved, it shall be immediately removed from the construction site by the Contractor at his own expense.

Contractor may appeal to 1 WTC Construction Manager's rejection of any portion of the Work within five (5) days of such rejection. 1 WTC's decision of such appeal shall be final.

1 WTC reserves the right to reject Work regardless of Construction Manager's approval.

#### **71. MANUFACTURERS' CERTIFICATION**

Where materials and equipment are required by these Specifications to conform to certain standard or tentative specifications or requirements of any organizations, including American Society for Testing and Materials, American National Standards Institute, Association Rules for Grading Lumber, Federal Specifications, National Electrical Manufacturers Association, American Association of State Highway and Transportation Officials, American Water Works Association and the International Municipal Signal Association, the Contractor shall furnish to the Construction Manager the manufacturer's written certification that each of the materials or equipment conforms to the foregoing standard or tentative specifications. The certification shall be delivered to the Construction Manager prior to installation of the materials to which it refers. Such certifications shall not be binding or conclusive on the Construction Manager and may be rejected at any time by the Construction Manager if incorrect, improper or otherwise unsatisfactory in his opinion.

#### **72. NO RELEASE OF CONTRACTOR**

Any provision of this Contract for testing, inspection or approval, and any actual testing, inspection or approval, of any materials, workmanship, plant, equipment, drawings, program, methods of procedure, or of any other thing done or furnished or proposed by the Contractor to be done or furnished in connection with the Contract is for the benefit of the Construction Manager, not the Contractor. Any approval of such things shall be construed merely to mean that at that time the Construction Manager knows of no good reason for objecting thereto. No such provision for testing or inspection, no omission of testing or inspection, and no such approval shall release the Contractor from his full responsibility for the accurate and complete performance of the Contract in accordance with the Contract Drawings or from any duty, obligation or liability imposed upon him by the Contract or from responsibility for injuries to persons or damage to property.

### **73. ERRORS AND DISCREPANCIES**

If, in the performance of the Contract, the Contractor discovers any errors or omissions in the Contract Drawings or Specifications, or in the marks, lines and elevations furnished by the Construction Manager in the construction undertaken and executed by him, he shall immediately notify the Construction Manager and the Construction Manager shall promptly verify the same.

If with the knowledge of such error or omission and prior to the correction thereof, the Contractor proceeds with any construction affected thereby, he shall do so at his own risk and the construction so done shall not be considered as construction done under and in performance of this Contract unless and until approved and accepted.

### **74. ACCIDENTS AND FIRST AID PROVISIONS**

The Contractor shall promptly report in writing to the Construction Manager all accidents whatsoever arising out of or in connection with the performance of the Contract, whether on or adjacent to the construction site, which result in death, injuries or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damage is caused, the accident shall be reported immediately by telephone to the Construction Manager.

The Contractor shall provide at the construction site such equipment and medical facilities as are necessary to supply first aid service, in case of accident, to any who may be injured in the progress of the Contract. He shall have standing arrangements for the removal and hospital treatment of any person who may be injured while engaged in the performance of the Contract.

If any claim is made by any third person against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the fact in writing to the Construction Manager, giving full details of the claim.

### **75. SAFETY PROVISIONS**

In the performance of the Contract, the Contractor shall exercise every precaution to prevent injury to workers and the public or damage to property, follow the health and safety requirements set forth herein. Contractor shall comply with The Port Authority of New York and New Jersey "World Trade Center Site Rules and Regulations" (Rider N) and Construction Manager's "Safety Guidelines" (Rider M) and complete all forms set forth therein.

He shall, at his own expense, provide temporary structures, place such watchmen, design and erect such barricades, fences and railings, give such warnings, display such lights, signals and signs, exercise such precaution against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed.

The Contractor shall employ for Work of the Contract a competent person conforming to the requirements of the Code of Federal Regulations 29 CFR 1926.32(f) who shall be designated by the Contractor as authorized to perform the duties required by 29 CFR 1926 et seq. as applicable for Work of this Contract.

Obtain and submit to the Construction Manager one copy of material safety data sheet (MSDS) conforming to the requirements of 29 CFR 1910.1200(g) for each hazardous chemical utilized for permanent and consumable materials employed for Work of this Contract.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss, including but not limited to:

- A. All employees on the Work, the public, and other persons and entities who may be affected thereby;
- B. All the Work, materials and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and the Contractor has removed all workers, material and equipment from the construction site, or the issuance of the Certificate of Final Completion, whichever shall occur last.

Until fire protection needs are supplied by permanent facilities under this Contract, install and maintain temporary fire protection facilities. Comply with requirements of National Fire Protection Association NFPA 10 "Standard for Portable Fire Extinguishers" and NFPA 241 "Standard for Safeguarding Construction, Alteration and Demolition Operations".

The Contractor shall employ only such men as are physically fit and are free from contagious or communicable diseases.

He shall use only machinery and equipment adapted to operate with the least possible noise, and shall so conduct his operations that annoyance to occupants of nearby property and the general public will be reduced to a minimum.

The bringing of intoxicating substances onto the construction site and the use or consumption of intoxicating substances at the construction site are prohibited. It shall be the responsibility of the Contractor to insure that all employees of the Contractor and of all Subcontractors, Materialmen and any other persons under contract to or under the control of the Contractor shall comply with the provisions of this paragraph.

The Contractor shall daily clean up all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the construction site shall present a neat, orderly and workmanlike appearance. Before the Certificate of Final Completion of Work will be issued, the Contractor shall remove all surplus materials, falsework, temporary fences and other temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations and shall put the construction site in a neat, orderly condition.

In the event the Contractor encounters at the construction site, material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Construction Manager. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Construction Manager.

Within fifteen (15) days of the acceptance of his Proposal, the Contractor shall submit to the Construction Manager, for Construction Manager's review and approval, the Contractor's Safety Program which shall comply with all applicable federal, state, municipal and local and departmental laws and shall include, among other things, the designation by the Contractor of a qualified individual to administer such Safety Program.

#### **76. DAILY PROGRESS, EQUIPMENT AND LABOR REPORTS**

The Contractor shall furnish to the Construction Manager at the end of each day Work is performed at the construction site, a memorandum showing for that day (a) the construction performed, (b) the type of equipment used identifying each piece of equipment as owned by the Contractor or rented from others; (c) a statement of any unusual happening that occurred, and (d) the names and number of workers in each trade classification that were employed. Such memorandum shall not be deemed to be a substitute for the notices, time slips, memoranda or other data required under the clauses of the Form of Contract relating to compensation for Extra Work.

#### **77. LAWS AND ORDINANCES**

Contractor shall apply for and obtain all required permits to perform its Work. In order to effectuate the policy of the Authority, which the Construction Manager and 1 WTC adopt as set forth herein, the Contractor shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations, permit requirements, and orders which would affect the Contract and the performance thereof and those engaged therein if said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract Drawings, in which event the latter requirements shall apply. However, the Contractor shall not apply for any permits, licenses or variances in the name of or on behalf of the Construction Manager and 1 WTC, but shall do so in Contractor's own name, unless otherwise prohibited by law. Contractor shall not apply for any variance without first obtaining the approval of the Construction Manager and 1 WTC.

#### **78. IDENTIFICATION**

No person will be permitted on or about the construction site without a pass, permit or identification badge approved by the Construction Manager. The Contractor shall provide such passes, permits or identification badges for his employees, Subcontractors and Materialmen whenever necessary. Identification badges shall be worn in a conspicuous and clearly visible position by all employees of the Contractor whenever they are working at the construction site.

#### **79. SIGNS**

No advertisement or sign, other than the name and address of the Contractor, will be permitted on any fences, temporary structures or elsewhere on the construction site and such advertisement will be permitted only upon the condition that it is first approved by the Construction Manager. In any event, the advertisement shall not exceed six feet by eight feet (6' x 8') in overall dimensions.

#### **80. CONTRACTOR'S FIELD OFFICE AND REPRESENTATIVE**

At a readily accessible point on or near the construction site, the Contractor shall maintain a field office provided with a telephone.

During the performance of any Work at the construction site, the Contractor shall have a representative thereat who shall be authorized by the Contractor to receive and put into effect promptly all orders, directions and instructions from the Construction Manager. The Contractor's representative shall be provided, at all times, with a conformed copy of this Contract and a set of the Contract Drawings.

Orders and directions may be given orally by the Construction Manager and shall be received and promptly obeyed by the Contractor or his representative or any superintendent, foreman or other employee of the Contractor who may have charge of the particular part of the Work in relation to which the orders or directions are given. A confirmation in writing of such orders or directions will be given by the Construction Manager when so requested by the Contractor.

#### **81. SURVEYS**

The Construction Manager will establish a bench mark and a base line based on information provided by Engineer at or adjacent to the location of the Contractor's operations. The Contractor shall perform all surveys which may be required for the performance of the Contract. He shall carefully preserve any base line and bench mark which may be established by the Construction Manager.

The Contractor shall, in addition, furnish to the Construction Manager, without additional compensation therefor, any or all information and data regarding points, lines, grades, elevations and other survey information established by the Contractor during the performance of the Contract.

Surveys and measurements of quantities for purposes of computing Contractor's compensation shall be made by the Contractor as directed by and in the presence of, or jointly with, the Construction Manager, at the Construction Manager's option. Computations of quantities for payment shall be made by the Contractor and shall be subject to the approval of the Construction Manager.

#### **82. TEMPORARY STRUCTURES**

Unless otherwise provided in this Contract, the Contractor shall determine the need for and shall design, furnish and construct all barricades, fences, staging, falsework, formwork, shoring, scaffolding and other temporary structures required in the performance of the Contract, whether or not of the type enumerated in the Specifications or on the Contract Drawings, including those which would be required by law or regulation if this Contract were being performed for a private corporation. All such temporary structures shall be of adequate strength for the purposes for which they are constructed and shall be provided with graphics, warning signs and warning lights as required to inform personnel and the public of the hazards being protected against, and the Contractor shall maintain them in satisfactory condition. The design and drawings for such structures are to be prepared by the Contractor, and when requested by the Construction Manager they shall be submitted for Construction Manager's review before being used. Neither such approval, however, nor any requirements of the Engineer, Construction Manager or Contract Drawings shall relieve the Contractor of his responsibility for the design, construction and use of the temporary structures or from any obligations and risks imposed on him under this Contract, and any such approval or requirements shall be deemed merely to relate to minimum standards and not to indicate that the temporary structures are adequate or that they meet the Contractor's obligations under this Contract.

Temporary structures shall be painted with an approved dark color paint and shall be repainted whenever necessary during the period that the Contract is being performed. Upon completion of all Work under this Contract, the temporary structures shall be removed from the construction site.

### **83. PERMIT AND REQUIREMENTS FOR WELDING**

Prior to the commencement of any cutting or welding operations at the construction site, the Contractor shall notify the Construction Manager and obtain a 1 WTC cutting and welding permit. 1 WTC will issue this permit without payment of a fee, and application forms may be obtained from Construction Manager. Unless otherwise approved by 1 WTC, all cutting and welding operations shall be performed in accordance with the conditions which form a part of said permit. The permit application must be filled out and submitted in duplicate to the Construction Manager at least forty-eight (48) hours prior to commencing welding or cutting operations at the construction site.

### **84. FINAL INSPECTION**

When, in the opinion of the Contractor, the construction is completed and ready for final inspection, he shall so notify the Construction Manager in writing, who will give said construction (including any portions with respect to which Certificates of Partial Completion have been issued) a minute and thorough inspection. Before any Certificate of Final Completion will be issued, any defects or omissions noted on this inspection must be corrected by the Contractor.

### **85. WARRANTIES**

The Specifications may provide for certain warranties of portions of the permanent construction. These warranties are intended for the greater assurance of 1 WTC and not as a substitute for rights which 1 WTC might otherwise have. Although such warranties shall be enforceable as provided, neither any requirement of this Contract with respect to warranties by the Contractor nor any guarantee or warranty given to the Contractor or 1 WTC by any manufacturer shall be deemed to be a limitation upon any rights which 1 WTC would have, either expressed or implied, in the absence of such guarantees or warranties.

### **86. UTILITY RECORD DRAWINGS**

Prepare, on mylar sheets 22" x 34" or other size approved by the Engineer, drawings showing the exact locations and elevations of underground utility construction including manholes, catch basins, inlets, pipe lines and structures for carrying gases (including air) and fluids including water, storm drainage, sewage, oil, chemicals, electrical duct runs, cables and conduits, for new construction or extension of existing utilities installed underground under this Contract.

Submit to the Construction Manager for transmittal to the Engineer, for verification and approval, tabulation of the data to be used in the preparation of the utility record drawings. Do not build-in, backfill or fill over or around or in any way cover underground structures, piping, conduit, cable or duct banks until such submitted data has been verified and approved by the Engineer.

Indicate the exact locations, including changes of direction and curves, by the use of offset distances from nearby permanent structures and, in addition, by the use of coordinates which shall be based on the system of coordinates used at the construction site, the origin of which is shown on the Contract Drawings. Base elevations on the datum used at the construction site as is shown on the Contract Drawings.

Submit prints of these drawings to the Construction Manager for transmittal to the Engineer for verification, check of the accuracy, and for approval. Make indicated corrections and additions to the drawings, until the approval of the Engineer has been obtained. After these drawings have been approved by the Engineer, the original corrected mylar sheets shall be turned over to the Engineer before issuance of the Certificate of Final Completion, and such original drawings shall become the property of 1 WTC.

- 87. TEMPORARY UTILITY SERVICES [SEE ATTACHED RIDERS]**
- 88. TEMPORARY SANITARY FACILITIES [SEE ATTACHED RIDERS]**
- 89. PROGRESS SCHEDULE [SEE ATTACHED RIDERS]**
- 90. ANALYSIS OF BID**

Within fifteen (15) calendar days after acceptance of the Proposal, the Contractor shall prepare a detailed analysis of bid on forms furnished by the Construction Manager with all of the spaces filled in without exception, and containing such information as the Construction Manager may require for each of the items enumerated in such form.

- 91. CONDITIONS AND PRECAUTIONS [SEE ATTACHED RIDERS]**
- 92. HOURS OF WORK AND CONSTRUCTION STAGING [SEE ATTACHED RIDERS]**
- 93. MAINTENANCE OF TRAFFIC AND WORK AREA PROTECTION [SEE ATTACHED RIDERS]**